

Deposition of Steve Wohlwend, 2/2/2004

| | |
|---|---|
| <p>Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE CENTRAL DISTRICT OF CALIFORNIA 3 SOUTHERN DIVISION 4 LIFETIME PRODUCTS, INC., a Utah corporation, 5 Plaintiff, 6 vs. 7 ALTON INDUSTRIES, INC. and 8 MAXCHIEF INVESTMENTS, LTD., Defendants.</p> <hr/> <p>9 DEPOSITION OF STEVE WOHLWEND</p> <hr/> <p>10 11 TAKEN AT: WORKMAN NYDEGGER 12 60 East South Temple, Suite 1100 13 Salt Lake City, Utah 84101 14 DATE: February 2, 2004 15 TIME: 9:10 a.m. 16 REPORTER: DAWN M. DAVIS, RPR 17 18 19 20 21 22 23 24 25</p> | <p>Page 3</p> <p>1 EXHIBITS 2 Number Page 3 862 Memo to Vince dated 5/4/95 70 4 863 Quote 77 5 864 Memo to Mary dated 5/24/95 74 6 866 Letter to Deanne Witt dated 1/28/97 106 7 867 Trip report dated 1/29/97 114 8 868 Letter to Rick Noegel dated 10/28/96 99 9 867 Memo to Scott Hines dated 4/1/97 114 10 870 Table (retained by counsel) 136 11 873 Vender Agreement (Basic) 67 12 880 Diagram 29 13 881 Price list 67 14 882 Letter to Steve Wohlwend dated 8/10/95 94 15 883 Letter to Michael Day dated 8/11/95 96 16 884 Worksheet only 105 17 885 Memo to Vince Rhoto re 4/30 meeting 122 18 886 Handwritten note dated 5/12/97 124 19 887 Memo to Rick Noegel dated 10/17/97 126 20 888 Declaration of Michael Long 130 21 22 23 24 25</p> |
| <p>Page 2</p> <p>1 APPERANCES 2 3 For the Plaintiff: 4 LARRY LAYCOCK 5 REX L. SEARS 6 WORKMAN NYDEGGER 7 60 East South Temple, Suite 1000 8 1000 Eagle Gate Tower 9 Salt Lake City, Utah 84111 10 11 For the Defendants: 12 MARK P. CROCKETT 13 GEOFFREY D. KRESSIN 14 LUEDEKA, NEELY AND GRAHAM 15 1871 Riverview Tower, P.O. Box 1781 16 Knoxville, TN 37901-1871 17 18 INDEX 19 Witness Page 20 STEVE WOHLWEND 21 Examination by Mr. Crockett 4 22 Examination by Mr. Laycock 138 23 Further Examination by Mr. Crockett ... 141 24 25</p> | <p>Page 4</p> <p>1 Deposition of Steve Wohlwend 2 February 2, 2004 3 PROCEEDINGS 4 Steven Wohlwend, called as a witness 5 for and on behalf of the Defendants, being first 6 duly sworn, was examined and testified as follows: 7 EXAMINATION 8 BY-MR.CROCKETT: 9 Q. Mr. Wohlwend, good morning. We 10 introduced ourselves earlier. I am Mark Crockett 11 and I'm representing Alton Industries and Maxchief 12 Investments in a lawsuit, Lifetime v. Alton and 13 Maxchief. 14 Have you ever given a deposition 15 before? 16 A. Only thing I've ever done was, under 17 oath was something over the phone on a car, a car 18 insurance thing and I don't know if it was called 19 a deposition or just information. 20 Q. Okay. 21 A. That was it. 22 Q. Basically what is going to be this 23 morning is I am going to ask a series of 24 questions and you will provide some answers to the 25 best of your recollection. And anything that we</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

1 (Pages 1 to 4)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-985-2180

Toll Free: 877-441-2180

Fax: 801-985-2181

| | |
|---|--|
| <p style="text-align: right;">Page 5</p> <p>1 discuss, if there is anything that I say that's 2 not clear to you, let me know and I'll repeat it. 3 If--and then just for the sake of a 4 dear record, we'll try not to step on each 5 other. If I can finish my question before you 6 answer and I'll try not to step on your answer 7 with my next question-- 8 A. (Witness nods head.) 9 Q. --and try to keep the record clear. 10 From time to time your attorney may 11 object to some things that I ask and we may have 12 a discussion about that objection, but if you can 13 focus on the question and try to answer the 14 question to the best of your ability, I would 15 appreciate that. 16 A. (Witness nods head.) 17 Q. Okay. Fair enough? 18 A. Yes. 19 Q. All right. Did you, did you have any 20 documents to produce this morning in response to a 21 subpoena that was served? 22 A. No. 23 Q. Do you understand that certain 24 documents were produced earlier by Frontier 25 Northwest in response to a subpoena?</p> | <p style="text-align: right;">Page 7</p> <p>1 Serengeti, Bolle. Oh, and Columbia Socks. There 2 is another one. 3 Q. Is that the same Columbia as the 4 outdoor clothing manufacturer, the big Columbia 5 that we see 6 A. Yes. 7 Q. --with the logo and everything? 8 What is the name of your company? 9 A. The Frontier Group. 10 Q. The Frontier Group. 11 And how is it related, if at all, with 12 Frontier Northwest? 13 A. Currently there's no relationship. 14 Before that--before the first of this year the 15 Frontier Group owned Frontier Northwest. 16 Q. Okay. But you say currently there is 17 no association between the companies? 18 A. Yes. 19 Q. Okay. 20 A. We do have a, a shared office, but as 21 far as having financial recompense for shared 22 lines, there's nothing like that. 23 Q. I see. 24 A. They are a free-standing company, as is 25 the Frontier Group.</p> |
| <p style="text-align: right;">Page 6</p> <p>1 A. Yes. 2 Q. Okay. But you had no further-- 3 A. No. 4 Q. --documents to add to that? 5 A. No, I do not. 6 Q. Okay. Well, I would like to start off 7 with your current employment. Would you tell me 8 what you are doing right now? 9 A. I am a independent manufacturer's rep. 10 Q. Okay. Could you describe for me what a 11 manufacturer's rep does? 12 A. We are the sales arm for a vendor into 13 the retail/wholesale trade in a given geographical 14 area based on a commission return for what work 15 is sold, what's done. 16 Q. Okay. Do you currently represent more 17 than one vendor? 18 A. Yes. 19 Q. Okay. How many vendors do you 20 currently represent? 21 A. I think six, but there may be another 22 one or two I don't remember. 23 Q. Okay. You think you could name those 24 six for me? 25 A. Keltly, Acom, Red Feather, Chisco,</p> | <p style="text-align: right;">Page 8</p> <p>1 Q. And where are those shared offices? 2 A. 623 South 227th Street, Des Moines, 3 Washington, 98198. 4 Q. And when did the--well, let me back up. 5 What sort of transaction separated the 6 two companies? How did that transaction play out? 7 Was it--let me see if I can clear that question. 8 Did Frontier Group sell Frontier 9 Northwest to some other individuals? 10 A. Yes, to the people that are there. 11 Q. Okay. 12 A. Dan Stivers, Mary Jackson and Mark 13 McCollum. 14 Q. And did you say that that sale occurred 15 earlier this year, 2004? 16 A. Yes. 17 Q. Okay. Now, just so that I'm clear, 18 later we are going to see some, some documents 19 with the name Mary Derheim on those documents. 20 Is Mary Derheim the same person as Mary Jackson? 21 A. Yes. 22 Q. Okay. Prior to the sale of Frontier 23 Northwest to these individuals were you the sole 24 owner of--or are you the majority shareholder of 25 Frontier Northwest?</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

2 (Pages 5 to 8)

| | |
|---|---|
| <p style="text-align: right;">Page 9</p> <p>1 A. Sole owner. 2 Q. Sole owner? 3 A. Yes. 4 Q. Okay. Okay. And were you also the 5 sole owner of the Frontier Group? 6 A. Yes. 7 Q. Prior to the sale of Frontier 8 Northwest? 9 A. Yes. 10 Q. Okay. And are you still the sole owner 11 of Frontier Group? 12 A. Yes. 13 Q. Okay. What year did you start the 14 Frontier Group? 15 A. I don't know. 16 Q. Can we narrow it down to, say, a period 17 of five years? Would it have been before 1990? 18 A. May I elaborate to try to get to that 19 answer? 20 Q. Absolutely. 21 A. In 1979 I went to the area and that was 22 the start of the business that eventually turned 23 into the Frontier Group. When it changed, the 24 name became Frontier Group, I don't know. 25 Q. Okay.</p> | <p style="text-align: right;">Page 11</p> <p>1 Group? Let me clarify that question. 2 I am not talking about the most recent 3 sale of Frontier Northwest, I am talking about at 4 some point in the history of the two companies, 5 Frontier Northwest began as a company separate 6 from Frontier Group. When would that have 7 occurred? 8 A. I don't know. 9 Q. Okay. Before 1990? 10 A. I don't know. 11 Q. Fair enough. 12 Was—or is Lifetime Products a, a 13 vendor that Frontier Northwest represents 14 currently? 15 A. As far as I know, yes. 16 Q. Okay. And, again, that's all we are 17 asking. 18 A. That's not my business. 19 Q. I understand. And, again, all we are 20 asking for is what you know about these topics. 21 When you had an ownership interest in 22 Frontier Northwest did they represent Lifetime 23 Products, Inc.? 24 A. Yes. 25 Q. Can you tell us when Frontier Northwest</p> |
| <p style="text-align: right;">Page 10</p> <p>1 A. That would have been late '80s or early 2 '90s. 3 Q. And when you started the company in the 4 late '80s or early '90s was it as a, was its sole 5 focus as a manufacturer's rep? 6 A. Yes, it was. 7 Q. Do you recall who your first, the first 8 vendor you represented? 9 A. I only recall one. 10 Q. And who would that be? 11 A. Wenzel. 12 Q. Could you spell that for us, please. 13 A. W-e-n-z-e-l. 14 Q. And what did they manufacture? What do 15 they manufacture? 16 A. Camping equipment. 17 Q. Now we've—I think you testified that 18 Frontier Group and Frontier Northwest are separate 19 legal entities. Is that correct? 20 A. (Witness nods head.) 21 Q. They are currently separate legal 22 entities. Is that correct? 23 A. Yes. 24 Q. And at what point did Frontier 25 Northwest become an entity separate from Frontier</p> | <p style="text-align: right;">Page 12</p> <p>1 first began representing Lifetime Products? 2 A. I, I really do not remember the dates 3 when this came about, but it's been 10 or 15 4 years at least. 5 Q. Okay. How did, how did Frontier 6 Northwest begin representing Lifetime? What was 7 the—how did that relationship get started? 8 A. I called Lifetime and offered our 9 services. 10 Q. When you say you called Lifetime, was 11 that just a cold call or did you know somebody 12 there? 13 A. Cold call. 14 Q. And at that time did you have anyone 15 working with you at Frontier Northwest? 16 A. At that time I had a partner in 17 Portland. 18 Q. And what was his name? 19 A. Burrill Taylor. 20 Q. Is that B-u-r-r-i-l or b-e 21 A. B-u-r-r-i-l. 22 Q. So was he your partner in Frontier 23 Northwest? 24 A. Yes. 25 Q. Did you have any other employees at</p> |

3 (Pages 9 to 12)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 60 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-883-2180

Toll Free: 877-441-2180

Fax: 801-883-2181

| | |
|--|---|
| <p style="text-align: right;">Page 13</p> <p>1 that time? Again, we are talking about the</p> <p>2 period of time when you made the cold call to</p> <p>3 Lifetime.</p> <p>4 A. We had other employees. I don't</p> <p>5 remember who they were at that time. I do</p> <p>6 remember that Burrill was still my partner when we</p> <p>7 did that because I'm pretty sure that he made</p> <p>8 some presentations for Lifetime. That's why--</p> <p>9 that's the way I remember him being--because I</p> <p>10 don't remember when, what year it was that I</p> <p>11 bought him out and owned it solely, but it's been</p> <p>12 some time; 10, 12 years, something like that.</p> <p>13 Q. Okay. Do you recall if Mary Derheim</p> <p>14 was associated with Frontier Northwest when you</p> <p>15 first contacted Lifetime?</p> <p>16 A. I do not recall.</p> <p>17 Q. What about Dan Stivers, same question?</p> <p>18 A. Repeat, please.</p> <p>19 Q. Would--was Dan Stivers associated with</p> <p>20 Frontier Northwest at the time you first contacted</p> <p>21 Lifetime?</p> <p>22 A. I don't know if he was or not. I don't</p> <p>23 know. I, I can't say.</p> <p>24 Q. Okay. What about Mark McCollum?</p> <p>25 A. Same thing. I don't, I don't remember</p> | <p style="text-align: right;">Page 15</p> <p>1 as you can recall. Your earliest association with</p> <p>2 Lifetime, can you recall which accounts you</p> <p>3 brought, you brought Lifetime to?</p> <p>4 A. I think that we got BiMart. I think GI</p> <p>5 Joe's. Ernst. Costco. That's what I remember.</p> <p>6 Q. Okay. Now, did you personally</p> <p>7 introduce Lifetime to BiMart?</p> <p>8 A. No.</p> <p>9 Q. Who would have done that?</p> <p>10 A. My partner.</p> <p>11 Q. Mr. Taylor?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. What about Costco, do you recall</p> <p>14 who introduced Lifetime to Costco?</p> <p>15 A. I think--and I'm not sure of this--I</p> <p>16 think it was Mary, which would be Derheim at that</p> <p>17 time. And I may have been involved but I do not</p> <p>18 recall.</p> <p>19 Q. Do you know if, if Ms. Derheim had any</p> <p>20 connections with Costco?</p> <p>21 MR. LAYCOCK: Objection. Vague.</p> <p>22 BY MR. CROCKETT:</p> <p>23 Q. When I say connections, did she know</p> <p>24 someone at Costco that she could contact to</p> <p>25 introduce Lifetime?</p> |
| <p style="text-align: right;">Page 14</p> <p>1 the order of when we got the line to whom was,</p> <p>2 was at that time had joined the company. I, I</p> <p>3 don't have the sequences.</p> <p>4 Q. Okay.</p> <p>5 A. So the only reason I remember Burrill</p> <p>6 was still my partner, I can remember that he</p> <p>7 made, I think, some presentations or something.</p> <p>8 That's, that's how I can connect that.</p> <p>9 Q. All right. Do you recall what products</p> <p>10 Lifetime was manufacturing when you first</p> <p>11 contacted them?</p> <p>12 A. Yes.</p> <p>13 Q. Can you tell us what they were?</p> <p>14 A. They were basketball equipment. Mainly</p> <p>15 the hard goods.</p> <p>16 Q. You say basketball equipment. We are</p> <p>17 talking about basketball goals?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell us which, which accounts</p> <p>20 you introduced Lifetime products to? And when I</p> <p>21 say accounts, just so we are clear for the</p> <p>22 record, I'm talking about companies that, that</p> <p>23 ultimately sold Lifetime's products retail.</p> <p>24 A. That I personally did?</p> <p>25 Q. Well, let's start, let's go back as far</p> | <p style="text-align: right;">Page 16</p> <p>1 MR. LAYCOCK: Objection. Calls for</p> <p>2 speculation.</p> <p>3 BY MR. CROCKETT:</p> <p>4 Q. To your best recollection.</p> <p>5 A. What's the question here? I'm getting</p> <p>6 lost a little bit.</p> <p>7 Q. Okay. Do you know if Mary Derheim</p> <p>8 had--knew someone at Costco that she could contact</p> <p>9 to introduce Lifetime to Costco?</p> <p>10 MR. LAYCOCK: Objection. Calls for</p> <p>11 speculation as to what Mary may or may not have</p> <p>12 known.</p> <p>13 BY MR. CROCKETT:</p> <p>14 Q. I'm sorry, let me clarify. I am not</p> <p>15 asking you what Mary knew, I'm asking you if you</p> <p>16 know, did she know someone at Costco that she</p> <p>17 could contact to introduce Lifetime to Costco?</p> <p>18 A. I'm the one that was the lead person</p> <p>19 that directed my people what to do and where to</p> <p>20 go in a general sense as the management person</p> <p>21 and was involved in wherever apparently at that</p> <p>22 time felt was appropriate.</p> <p>23 Mary went where I told her and called</p> <p>24 on whomever whether she knew them previously or</p> <p>25 not.</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

4 (Pages 13 to 16)

| | |
|---|--|
| <p style="text-align: right;">Page 17</p> <p>1 Q. Okay. So do you recall if you directed 2 Ms. Derheim to contact-- 3 A. I do not recall if I made the call or 4 if she did initiate the contact. 5 Q. Can you tell us what year you or Ms. 6 Derheim first contacted Costco on behalf of 7 Lifetime Products? 8 A. I do not remember. 9 Q. Would it have been before 1995? 10 A. I don't remember. 11 Q. Let's talk about the locations of 12 Frontier Northwest and Frontier Group's facilities 13 for a few minutes. 14 When you first started Frontier Group 15 where did you have your, where did you operate 16 your business? 17 A. I, I don't know because Frontier Group, 18 there were entities during my tenure that was, at 19 one time the name was Taylor Howard and Associates 20 when I first joined the company. Then the 21 company became Frontier Northwest. Then the 22 company became Frontier Group. Then the company 23 became Frontier Group which owned, owned, had the 24 wholly-owned subsidiary Frontier Northwest. 25 How it, the timing of those changes and</p> | <p style="text-align: right;">Page 19</p> <p>1 were two partners, Barry Howard and Burrill 2 Taylor. I came in as a third partner sometime in 3 about the first year and a half, and I'm guessing 4 at that; within a year, I think, of that 5 guestimate. Mr. Howard left and that left Mr. 6 Taylor and myself. And we then changed the name 7 to Frontier Northwest since Mr. Taylor was no 8 longer an associate. 9 Q. When you changed the name to Frontier 10 Northwest where was the business based? 11 A. It was based out of Portland at Burrill 12 Taylor's home. 13 Q. Okay. 14 A. Because that's where the bookkeeping 15 was done. So we considered that our base of 16 operations. 17 Q. Okay. And where was Burrill Taylor's 18 home? 19 A. I don't remember the name. I think it 20 was a south Portland address but I do not know. 21 Q. That is in the state of Washington? 22 A. Oregon. 23 Q. Oregon. 24 Did Frontier Northwest move its base of 25 operations out of Mr. Taylor's home at some point?</p> |
| <p style="text-align: right;">Page 18</p> <p>1 how that relates to when this took place, I don't 2 remember. 3 Q. Okay. Well, let's talk about 4 locations. You said that the first entity was 5 Taylor Howard and Associates? Is that correct? 6 A. Uh-huh. 7 Q. And where was that business based? 8 A. There was a--we worked out of our 9 homes. 10 Q. So did you work out of your home during 11 your association with that company? 12 A. Yes. 13 Q. And where was your home at that time? 14 A. Tumwater, Washington. Tumwater. 15 Q. Tumwater? 16 A. T-U-M, water, one word. 17 Q. Okay. As I recall, you said that 18 Taylor Howard and Associates then evolved into 19 Frontier Northwest. 20 A. (Witness nods head.) 21 Q. Let's clarify all that, how that 22 happened. 23 How did Taylor Howard and Associates 24 become Frontier Northwest? 25 A. When I first joined the company there</p> | <p style="text-align: right;">Page 20</p> <p>1 A. Yes. 2 Q. And where did Frontier Northwest move 3 its base of operations? 4 A. After it left Mr. Taylor's home it went 5 to Wilsonville, Oregon. 6 Q. As we talk about these change of 7 location, do you recall any years, the time period 8 that this might have occurred? 9 A. No, sir, I do not recall. 10 Q. Now, at Wilsonville, Oregon were you 11 operating out of someone's home or did you have 12 some other location? 13 A. Had a office in an office complex. 14 Q. At that time, when you moved into the 15 office complex in Wilsonville, was Frontier 16 Northwest representing Lifetime Products? 17 A. I don't know. 18 Q. Did you ever keep any--strike that. 19 Do you recall who you were 20 representing, which manufacturers Frontier 21 Northwest was representing at that time in 22 Wilsonville? 23 A. The only one that I could tell you 24 definitively that we were representing at that 25 time is Wenzel.</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

5 (Pages 17 to 20)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|--|--|
| <p style="text-align: right;">Page 21</p> <p>1 Q. And, as I recall, Wenzel is the camping 2 equipment? 3 A. Yes, sir. 4 Q. Okay. Did you ever have any samples of 5 Wenzel's products in your office in Wilsonville, 6 Oregon? 7 A. Yes. 8 Q. And what kind of products are we 9 talking about? 10 A. Tents, sleeping bags. Camp 11 accessories. 12 Q. Okay. Did you ever display those 13 products there in the office in Wilsonville? 14 A. Any time that I had been at that office 15 the products are kept, it was a three-room office 16 and we came in, there was a, the principle's 17 office to the right. To the left was a, the 18 office manager, secretary, assistant area of work. 19 Behind it was a meeting table. And then there 20 was a back room in the back where, with shelving 21 in a separate room where everything is kept. 22 That's—we would store everything back there on 23 shelves. 24 Q. So would it be fair to say that you 25 kept products in storage in your offices there for</p> | <p style="text-align: right;">Page 23</p> <p>1 A. No. As far as I know it's still there. 2 That is, Frontier Northwest, not Frontier Group? 3 Q. Okay. Thanks for the clarification. 4 So as far as you know there, there 5 could be a separate entity, Frontier Northwest, 6 still in operation in Wilsonville, Oregon? 7 A. Yes. 8 Q. All right. At what point did—well, 9 strike that. 10 I understood from your previous 11 testimony, then, that Frontier Group separated 12 from Frontier Northwest. Is that correct? 13 A. Yes. 14 Q. Can you describe what sort of legal 15 transaction that was, the separation of Frontier 16 Group from Frontier Northwest? 17 A. We formed another Subchapter-S company 18 called Frontier Group, made it where it owned 19 Subchapter-S Corporation Frontier Northwest. That 20 was what happened. 21 Q. Okay. So, so Frontier Northwest—we 22 have two Frontier Northwests we are talking about 23 here now. We are going to have to somehow 24 differentiate the two. 25 A. That's correct.</p> |
| <p style="text-align: right;">Page 22</p> <p>1 a, for Wenzel? 2 A. Whatever was appropriate at that time, 3 yes. 4 Q. Did you ever display the products to 5 potential customers? 6 A. I did not. 7 Q. Did any of your employees display those 8 products to potential customers in the offices? 9 A. I do not know. Generally they would 10 take them to the customer and display them. 11 The customer really doesn't like to 12 come to the office. They don't like to leave, 13 takes too much time. And if they start, they 14 want to beat you down, they would rather do it in 15 their arena so— 16 Q. Okay. 17 A. —so seldom; you are always hoping we 18 would like to but that's not a fact of life. 19 Q. Okay. Do you recall how long Frontier 20 Northwest operated out of Wilsonville, Oregon in 21 this office complex? 22 A. No, I don't. 23 Q. Where—well, did Frontier Northwest 24 move to a different location after Wilsonville, 25 Oregon?</p> | <p style="text-align: right;">Page 24</p> <p>1 Q. Just so that we avoid confusion let's, 2 we'll refer to the first Frontier Northwest as 3 number 1 and the second Frontier Northwest as 4 number 2. Is that fair enough, just so that we 5 can stay clear? 6 A. Well, there is actually three. 7 Q. Okay. 8 A. Frontier North— 9 MR. LAYCOCK: I suppose you'll want to 10 call that Frontier Northwest 3. 11 MR. CROCKETT: You are on top of it, 12 Larry. 13 THE WITNESS: The first one is the 14 Frontier Northwest that I owned as a partner and 15 subsequently alone. 16 The second one is the Frontier 17 Northwest that was formed when I separated it into 18 Frontier Group which owned Frontier Northwest. 19 The third one is the current Frontier 20 Northwest that is owned by the three principals, 21 Mark McCollum, Dan Stivers and Mary Jackson. 22 BY MR. CROCKETT: 23 Q. Okay. Fair enough. So how about to 24 avoid confusion we'll talk about Frontier 25 Northwest 1, 2 and 3 in the order that you just</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

6 (Pages 21 to 24)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-988-2180

Toll Free: 877-441-2180

Fax: 801-988-2181

| | |
|--|---|
| <p style="text-align: right;">Page 25</p> <p>1 described?</p> <p>2 A. Okay.</p> <p>3 Q. So, as I understand it, Frontier</p> <p>4 Northwest that's operating in Wilsonville, Oregon</p> <p>5 was the Frontier Northwest 1. Is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Now, when Frontier Northwest 2 was</p> <p>8 formed did its base of operations move from</p> <p>9 Wilsonville, Oregon to some other location?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And can you tell me where?</p> <p>12 A. I don't have my timing down very well.</p> <p>13 I have to go back and think. When I . . . I</p> <p>14 think that I had moved to 26233 Marine View Drive</p> <p>15 South, which at that time was a Kent address,</p> <p>16 when I made that change, which, which when I</p> <p>17 bought the balance of the company. I, I think</p> <p>18 that I was living there at that time. I will say</p> <p>19 that I could have still been in a condominium in</p> <p>20 Renton but I think, I don't remember for sure,</p> <p>21 but I think that's where it was, somewhere in</p> <p>22 there, but I was soon probably moved.</p> <p>23 Q. Okay. Kent. Is that K-e-n-t?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Is that in Washington or Oregon?</p> | <p style="text-align: right;">Page 27</p> <p>1 A. Yes.</p> <p>2 Q. Again, I'm not trying to beat a dead</p> <p>3 horse here but as we—you talk about these moves</p> <p>4 and changes in the company, perhaps something</p> <p>5 would—will cause you to remember some year so I</p> <p>6 might ask you from time to time, Do you recall</p> <p>7 what year this happened?</p> <p>8 A. Okay.</p> <p>9 Q. Do you recall when you moved from</p> <p>10 Wilsonville to Kent?</p> <p>11 A. No, I do not.</p> <p>12 Q. Okay. All right. You mentioned that</p> <p>13 Frontier Northwest 2's office at some point moved</p> <p>14 to Des Moines, Washington? Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. When the, when the business moved to</p> <p>17 Des Moines, Washington was it operating out of a,</p> <p>18 someone's home or did you have an office outside</p> <p>19 the home?</p> <p>20 A. Office.</p> <p>21 Q. Outside of the home?</p> <p>22 A. Yes.</p> <p>23 Q. And is that office in the same location</p> <p>24 as it is today, Frontier Northwest 3?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. Washington?</p> <p>3 A. Yes.</p> <p>4 Q. And you mentioned another town just—</p> <p>5 A. Renton.</p> <p>6 Q. Could you spell that for us?</p> <p>7 A. R-e-n-t-o-n. Previous to the Kent</p> <p>8 address I lived in Renton.</p> <p>9 Q. Again, is that Washington?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Thank you.</p> <p>12 So if I understand it, at some point</p> <p>13 the Frontier Northwest formed a separate entity,</p> <p>14 Frontier Northwest 2. You operated that company</p> <p>15 from either Kent or Renton. Is that fair to say?</p> <p>16 A. Yes.</p> <p>17 Q. And in either of those locations did</p> <p>18 you have an office outside your home?</p> <p>19 A. No. The only time that I had an office</p> <p>20 outside the home was after the Kent address.</p> <p>21 Then the office was moved into Des Moines,</p> <p>22 Washington, where it is now.</p> <p>23 Q. Okay. So do I understand that when you</p> <p>24 operated the company in Kent and/or Renton that</p> <p>25 you were operating it from your home?</p> | <p style="text-align: right;">Page 28</p> <p>1 Q. Could you describe for us the layout of</p> <p>2 the offices in Des Moines? Generally. I am not</p> <p>3 asking you for straining detail.</p> <p>4 A. Comprised of about 4500 square feet</p> <p>5 with cubicles down each side. Conference—clear</p> <p>6 glass in the middle. And the back half is</p> <p>7 storage, blocked off by a separation wall.</p> <p>8 Q. I wonder if I could impose upon you,</p> <p>9 Mr. Wohlwend, to sketch the layout of the offices</p> <p>10 in Des Moines. If you could do that. I'll get</p> <p>11 you some more lead here.</p> <p>12 Okay. I'd like the record to reflect</p> <p>13 that Mr. Wohlwend has sketched a floor plan and</p> <p>14 I'd like to at this time get the court reporter</p> <p>15 to mark this as Exhibit 880.</p> <p>16 MR. LAYCOCK: Do you accept that as a</p> <p>17 floor plan? Is that an appropriate description</p> <p>18 for what you've just sketched? How would you</p> <p>19 describe it.</p> <p>20 THE WITNESS: I would describe this as</p> <p>21 a rough sketch of how the things laid out so that</p> <p>22 you can just kind of generally see where the</p> <p>23 various people's offices are and this is the</p> <p>24 bathrooms and this is kind of the kitchen, coffee</p> <p>25 area. There is a refrigerator. This is probably</p> |

7 (Pages 25 to 28)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|---|---|
| <p style="text-align: right;">Page 29</p> <p>1 too deep this way. This should probably be up a 2 little bit here. I'd say it's a little bit just, 3 about half or so, right here. And this is 4 probably too big here but, otherwise it's pretty 5 damn good. 6 MR. CROCKETT: Before we go any further 7 let's go ahead and get this marked so that we can 8 refer to it. 9 Exhibit-880 marked 10 Q. Okay. Mr. Wohlwend, let's just talk 11 briefly about some of these features of the 12 offices. 13 On the--my left-hand side here, you're 14 right-hand, we're looking at some squares or boxes 15 that are labeled Sam, dan--what is this one? 16 A. Linda. 17 Q. Linda. Sorry. Mary. 18 A. (Witness nods head.) 19 Q. What are these? What do these 20 represent? 21 A. Cubicles, offices. 22 Q. Okay. And is this a cubicle for Mary 23 Derheim? 24 A. Yes. 25 Q. Linda?</p> | <p style="text-align: right;">Page 31</p> <p>1 A. Three and a half I would say would be a 2 good guess, halfway down either side here. And 3 this is probably more up there. And the same 4 distance there to there. So these should be 5 comparable. 6 Q. Okay. And we'll note for the record 7 that you are indicating the hallways around the 8 conference room are-- 9 A. Narrower than I've described here, 10 yeah. 11 Q. This area that you refer to as office 12 equipment, what office equipment, could you 13 clarify for me again what office equipment would 14 have been here? 15 A. Copy, fax. An area that has paper and 16 all, everything from pens, pencils, paper clips, 17 et cetera, et cetera. And then the area against 18 this back wall here was, is a shelving for 19 brochures. 20 Q. Okay. And you indicated that the room 21 adjacent to the office equipment area is a 22 kitchen? Is that correct? 23 A. We call it that. It does not have a 24 sink but it just has a place where you make 25 coffee, has a little table where the coffee and</p> |
| <p style="text-align: right;">Page 30</p> <p>1 A. Hafey, H-a-f-e-y. 2 Q. This would be Dan Stivers? 3 A. Yes. 4 Q. Sam? 5 A. Platt, P-l-a-t-t. 6 Q. Okay. And on the other side of the 7 drawing there are some rectangles also labeled 8 with names. Who is this? 9 A. John Morioka, M-o-r-i-o-k-a, Will 10 McComb, M-c-c-o-m-b, and his majesty, me. 11 Q. That would be Steve Wohlwend's office? 12 A. Right. 13 Q. Okay. And what is this? 14 A. That's an area where we had brochures, 15 office machines, equipment, fax, copy. 16 Q. Okay. And that's adjacent to your 17 office there? 18 A. On the other side of the wall. 19 Q. Okay. And what is this area here? 20 A. This area here is, should probably be 21 about like that, just kind of generally--these 22 hallways are not this wide. The area I have 23 shown looks like you could drive a truck but it's 24 about, about that wide. 25 Q. So maybe a three or four-foot hallway?</p> | <p style="text-align: right;">Page 32</p> <p>1 cups sit on and there is a refrigerator. 2 Q. Would it be fair to say if some folks 3 wanted to get a cup of coffee, they would come 4 down to the kitchen area? 5 A. Yeah. Until the last probably year, 6 maybe two years, I think, and I'm not even sure 7 about that, but in, into the last part of my 8 tenure did we ever have coffee. No one drank it. 9 Q. Okay. 10 A. They just didn't. It wasn't a thing--I 11 don't even know if we had a coffee pot, but we do 12 now. 13 Q. All right. You say you had a 14 refrigerator? 15 A. There is a refrigerator there. 16 Q. Some drinks? 17 A. Some of the people I think kept some 18 pop there, but I never had anything. 19 Q. Okay. And adjacent to the kitchen, 20 what is this area, this blank area on the 21 drawing? 22 A. Storage for--this is an area here that 23 has a--oh, I don't know what's there now. I 24 think they may have changed it but it was a rack 25 where we kind of kept tools and equipment and</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

8 (Pages 29 to 32)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-883-2180

Toll Free: 877-441-2180

Fax: 801-883-2181

| | |
|--|--|
| <p style="text-align: right;">Page 33</p> <p>1 pieces and parts and hard, hard goods for assembly 2 of product and that kind of thing. 3 And then just in this area here was a 4 lot of cardboard boxes and refuse-type stuff that 5 you may use or you haven't broken down yet for 6 recycle. That's a--this whole area here is 7 chameleon-like, ever-changing. 8 Q. Okay. We have a couple rectangles at 9 the top corner of the page labeled, this is WM? 10 A. Men's and women's. 11 Q. So are these the restrooms? 12 A. Yes, sir. 13 Q. Okay. Adjacent to the restrooms and 14 the kitchen appears to be an area that you had 15 labeled sample storage? Is that correct? 16 A. Yes, sir. 17 Q. And what else does it say here? Sample 18 storage and--is that assembly? 19 A. Yes. 20 Q. All right. And in the center of 21 Exhibit 880, toward the bottom half of the page 22 is an area that you have labeled, is this 23 conference, conference room? 24 A. Yes. 25 Q. Okay. What would be the purpose of</p> | <p style="text-align: right;">Page 35</p> <p>1 Q. So from time to time you would have, 2 there would be persons from outside Frontier 3 Northwest that would come in to meet with you in 4 the conference room? 5 A. Yes. 6 Q. Okay. Did you ever have 7 representatives of Costco in your conference room? 8 A. I don't remember. I have had--I am 9 trying to think if I had anybody there. I don't 10 remember. Hmm. I think that--I would be 11 speculating if I--I don't remember. 12 Q. Okay. Can you recall any individuals 13 that, that you had in your conference room from 14 any of your, any of the manufacturers that you 15 represented? 16 A. I did have people from the vendors? 17 Q. Yes. 18 A. Yes. 19 Q. Can you recall any particular 20 individuals that would have been in that 21 conference room? 22 A. Yes. 23 Q. Okay. Did you have representatives 24 from Kelty in your conference room? 25 A. Yes.</p> |
| <p style="text-align: right;">Page 34</p> <p>1 that, of that room? 2 A. The main usage is, there is big table 3 in there, not unlike this one, not quite as long, 4 and it was, the main usage was when somebody had 5 a project they are working on and they needed 6 table space that's where they went. 7 It was also a place where when the 8 principles came in together from the vendors and 9 us, where we could sit down around the table and 10 visit. 11 Q. When you say the principles of the 12 vendors, could you clarify who that, who that may 13 have been? 14 A. Anybody from a factory that we 15 represented or were wanting to represent. Or 16 anyone that you needed just to sit down and have 17 a face-to-face that usually was more than three 18 people. Up to three, usually had it in your 19 office. 20 Q. So these-- 21 A. Probably 95 percent of the time it was 22 used was for work paper like this where you could 23 spread out your brochures, documents and that kind 24 of thing was its real usage, but then you used it 25 for meetings.</p> | <p style="text-align: right;">Page 36</p> <p>1 Q. What sort of walls did the conference 2 room have? 3 A. Glass. 4 Q. This whole--all the way around glass? 5 A. Yes. 6 Q. Okay. From the conference room can you 7 see your office across the hallway? 8 A. Only to this portion here. There is 9 where the opening is, right here. 10 Q. Okay. 11 A. Otherwise, no. You've got to be kind 12 of in this general area here to be able to see 13 anything in my office because it's an opening 14 three feet. 15 Q. Okay. You are indicating the opening 16 to your, the door to your office? 17 A. Yes. 18 Q. From your conference room could you 19 look and see the office equipment area? 20 A. If you were at the back end of it, you 21 probably could see something back in here. Like 22 I said, this was set back further. This should 23 be this way and this was, this was, comes up more 24 like up in here. But line sight, I'd have to-- 25 you'd have to go look at it. I--this is a, you</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

9 (Pages 33 to 36)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|---|---|
| <p style="text-align: right;">Page 37</p> <p>1 know, a sketch and I'm, obviously I'm, as I look 2 at it, I'm going, well, that's not there and 3 that's not there but according to where you are 4 it's not a, it's not a large conference room but 5 it's not a miniature either and, you know, there 6 is an infinite number of places here that, you 7 know, you can get line of sight somewhere. 8 Q. Well as you recall, if, if you were to 9 stand in your conference room, do you recall ever 10 looking across the hall and seeing the copy 11 machine in the office equipment area? 12 A. Yes. 13 Q. Okay. You recall looking across the 14 hall and seeing the fax machine? 15 A. The thing that you can see from here, I 16 believe, is the copy machine. The fax machine is 17 right over here. 18 MR. LAYCOCK: The record should reflect 19 that the witness has indicated the far left-hand 20 and bottom portion of the copy area as the 21 location for the fax. 22 BY MR. CROCKETT: 23 Q. Do you need to take a break? 24 A. No, I'm feeling-- 25 Q. Okay. You indicated earlier that</p> | <p style="text-align: right;">Page 39</p> <p>1 what. I had them where they each had a primary 2 responsibility for, say, a category, an account, 3 and then they backed up the other person and 4 assisted them but I don't remember who was the 5 lead. That's a long time ago for me. 6 Q. Okay. You mentioned a Doubleshot. 7 What type of product is that? 8 A. A basketball game. 9 Q. You mentioned picnic tables and banquet 10 tables. What is your understanding of the 11 difference between a picnic table and a banquet 12 table? 13 A. Picnic table was used for picnicking 14 and outdoor things and banquet table is used for, 15 generally the purpose was, was utility table, 16 really, indoor-outdoor type activities. You could 17 use the banquet table indoors or outdoors. Seldom 18 do you use the picnic table indoors, mainly 19 outdoors, recreational activities, where the 20 banquet table is usually more utilitarian. 21 Q. Okay. So you indicated that the 22 banquet table is similar to a utility table or is 23 it the same or what 24 A. You can call it what you want. I can't 25 differentiate them.</p> |
| <p style="text-align: right;">Page 38</p> <p>1 Frontier Northwest represented Lifetime Products 2 with regard to basketball equipment. Is that, is 3 that a correct statement? 4 A. Yes. 5 Q. Did, during your association with 6 Frontier Northwest did Frontier Northwest 7 represent Lifetime with regard to any other 8 products besides basketball equipment? 9 A. During my ownership? Yes. 10 Q. Okay. And what products were those? 11 A. Trampolines. Actually, that wasn't 12 Lifetime. That's incorrect. Lifetime owned the 13 Doubleshot. The picnic tables we did and the 14 banquet tables. Let's see if there is any other 15 categories. Chairs. They did some chairs. But I 16 really wasn't too involved, hands-on, with--my 17 main portion was basketball when we got the line 18 first. That's where my exposure was. 19 Q. Who--if it wasn't you that had the main 20 responsibility for, say, the picnic tables, who 21 would that have been in Frontier Northwest? 22 A. It would have been Mary or Dan. 23 Q. And when you say Mary or Dan, is it 24 because you are not sure if it was Mary-- 25 A. I am not sure which one it was, who had</p> | <p style="text-align: right;">Page 40</p> <p>1 Q. Okay. In terms of structure, the 2 difference in structure between the picnic table 3 and a banquet table, what difference is it to 4 you, do you note? 5 MR. LAYCOCK: Objection. Lack of 6 foundation. 7 BY MR. CROCKETT: 8 Q. You can go ahead and answer. 9 A. Ask that again. Now let me think 10 what . . . 11 Q. Okay. Well, we differentiated between 12 picnic tables and banquet tables. I was just 13 wondering, what is your understanding of the 14 difference in structure between a picnic table and 15 a banquet table? 16 MR. LAYCOCK: Objection. Lack of 17 foundation. 18 BY MR. CROCKETT: 19 Q. Again, we are not talking about any 20 particular product, we are just talking generally 21 the difference between the structure of a picnic 22 table and a banquet table. 23 MR. LAYCOCK: Objection. Vague and 24 lack of foundation. 25 THE WITNESS: I'm not sure what</p> |



Thacker + Co LLC
Court Reporters

Utah's Leader in Litigation Support

10 (Pages 37 to 40)

| | |
|---|---|
| <p style="text-align: right;">Page 41</p> <p>1 you're--are you talking about usage? Are you 2 talking about the form? Are you talking about a 3 line? You know, you're talking about naming 4 something. That's . . . 5 BY MR. CROCKETT: 6 Q. Okay. Let me see if I can clarify. I 7 am just talking about the structure, the 8 components of the table, not-- 9 A. All right. Let me say this: A banquet 10 table can be used for a picnic. A picnic table 11 usually is not used for a utility type thing, 12 that's used--the difference--you know, you are 13 getting into--you are splitting hairs on what one 14 is one and what one is the other. It probably 15 could be what I put the label it on when I 16 package it, you know. 17 Usually the traditional form of a 18 picnic table back in the early years of the 19 1900s--or in the 1900s the general form, probably 20 was a table top with seats of some sort on two or 21 more sides, where a utility table did not have 22 seats. That would be kind of a general 23 differentiation of the way I would present them 24 because you go--from my perspective is taking it 25 into making presentations or to, in the marketing</p> | <p style="text-align: right;">Page 43</p> <p>1 A. To my knowledge, no. That's the only 2 one. 3 Q. Do you have any reason to believe that 4 Frontier Northwest has ever represented a 5 manufacturer that makes tables other than 6 Lifetime? 7 A. I don't think so. 8 Q. We discussed earlier the transfer or 9 sale of Frontier Northwest to Individual Stivers, 10 Jackson, McCollum. 11 A. (Witness nods head.) 12 Q. Did you, after that transfer do you 13 maintain any ownership interest in Frontier 14 Northwest? 15 A. No. 16 Q. Any stock in Frontier Northwest? 17 A. No. 18 Q. Are you employed in any way by Frontier 19 Northwest? 20 A. Me employed? 21 Q. Yes. 22 A. No. 23 Q. Okay. Do you derive any income 24 whatsoever from the Frontier Northwest? 25 A. Not that I know of. I'd like to. I'd</p> |
| <p style="text-align: right;">Page 42</p> <p>1 realm. 2 Q. Okay. Fair enough. So if you are 3 referring to a banquet table generally, are you 4 referring to a table that has benches or doesn't 5 have benches? 6 A. Does not. 7 Q. Okay. And if you are referring to a 8 picnic table, again, generally, are you referring 9 to a table that has benches or doesn't have 10 benches? 11 A. Traditionally that could go either way. 12 That can go either way. 13 Q. Okay. 14 A. Because you can have a picnic table 15 that does not have benches, that has integral 16 benches or has separated benches that are called 17 picnic tables or leisure-use tables, that kind of 18 thing. 19 Q. Okay. Do you--excuse me. Does 20 Frontier Northwest, to your understanding, 21 represent any manufacturers that make tables other 22 than Lifetime? 23 A. I don't know. I don't think so, but 24 that's speculation. Frontier Northwest? 25 Q. Yes.</p> | <p style="text-align: right;">Page 44</p> <p>1 take it from damn near anybody. But at this 2 point in time I get nothing, thank you. 3 Q. Okay. Fair enough. 4 Do you know the dollar amount, 5 approximately, in commissions that Frontier 6 Northwest earned last year, 2003, from sales of 7 Lifetime's products? 8 A. No, I don't. 9 Q. Do you have an approximation? 10 A. No. 11 MR. LAYCOCK: I would like to ask that 12 to the extent that we, we are now delving into 13 information which is confidential to both Mr. 14 Wohlwend and the company that he has been--had or 15 did at some time maintain an interest in that the 16 record be marked confidential and attorneys' eyes 17 only so as to preclude any inappropriate 18 disclosure of that information. 19 THE WITNESS: I'm not-- 20 MR. LAYCOCK: Do you so agree, counsel? 21 THE WITNESS: I'm not one to talk 22 financial. 23 MR. LAYCOCK: Just one moment. If we 24 could make sure that we have that agreement on 25 the record.</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

11 (Pages 41 to 44)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-988-2180

Toll Free: 877-441-2180

Fax: 801-988-2181

| | |
|---|---|
| <p style="text-align: right;">Page 45</p> <p>1 MR. CROCKETT: We agree that any, any 2 information that's confidential to Mr. Wohlwend or 3 to Lifetime should be kept attorneys' eyes only, 4 yes. 5 MR. LAYCOCK: We will designate the 6 record at this point as confidential under the 7 governing protective order in this case so as to 8 protect this information. 9 To the extent that you can answer. 10 Didn't mean to cut you off. 11 THE WITNESS: Well, I, well, am I—are 12 there going to be other financial questions for my 13 personal stuff? That's my personal stuff and I 14 just want to know. I don't know that I'm—am I 15 legally obligated to answer these questions? 16 Because that's something I have all my life, by 17 nature and by heredity, protected. 18 MR. CROCKETT: No, I understand and I 19 think that's a question that your attorney will 20 need to answer. 21 THE WITNESS: Someone needs to let me 22 know how relevant and appropriate this is before I 23 would like to proceed. 24 MR. LAYCOCK: Well, I think this 25 question is irrelevant but you need to answer the</p> | <p style="text-align: right;">Page 47</p> <p>1 school. I know in 1967 I got out of college, dah, 2 dah, but I'm telling you, beyond that I have, I 3 have problems. 4 BY MR. CROCKETT: 5 Q. Okay. Well, that's fair enough, we are 6 only asking you to recall— 7 A. This I recall is around 6- or \$700,000. 8 Q. Okay. In 2003? 9 A. For 2003. If I recall, that would be— 10 now I am giving you within a hundred thousand 11 dollars. That's my guess. I had people that took 12 care of that and just do a split out. I really 13 didn't know. I worked on kind of whether we had 14 increases if we were doing okay or not. 15 Q. Okay. Again, just to clarify the 16 record, it's been a long time since the question 17 so let's make sure that you are answering the 18 question I asked originally. 19 The question was, the approximate 20 dollar figure of commissions that Frontier 21 Northwest earned from sales of Lifetime's 22 products. 23 A. Commissions from Lifetime's products 24 altogether, in other words, they have several 25 categories, I think was in the 6- to \$700,000.</p> |
| <p style="text-align: right;">Page 46</p> <p>1 question because you are here, you are appearing 2 in the deposition. If you would like to take a 3 break, we can take a break and discuss that. 4 Depends on what the nature and scope of your 5 questions are going to be, Mark. 6 THE WITNESS: That's—I'll answer this 7 question but I would like to know the, you know, 8 if we are going to proceed down this line, it's 9 going to be in an adversarial manner I will 10 guarantee you because it is not my nature to 11 disclose that. 12 What I, what I remember and I don't—I 13 have—I will tell you this: I don't remember a 14 whole about lot of things. I have had a heart 15 attack subsequent to the time during this, in the 16 last couple of years and died on the table and at 17 that time I lost a lot of my specifics and that's 18 one of the reasons I'm not really accurate. Some 19 things do jog me and I know the general gist of 20 order of things but generally I don't really have 21 real good recall. If you said, hey, back in 1988 22 or 1962 or something like that, you know, dah, 23 dah, dah, dah or '98 or something, I really don't 24 know. 25 I know in 1963 I graduated from high</p> | <p style="text-align: right;">Page 48</p> <p>1 range, to my best recollection. 2 Q. Now, just generally, the year prior to 3 that, 2002, do you think it would be greater or 4 less than that? 5 A. I don't know, but close to probably the 6 same. 7 Q. Now, we are not going to go much 8 further down that road. We just thought that 9 that was relevant to this case. 10 MR. LAYCOCK: For the record, we 11 identify any answers relating in any way to 12 financial information to be confidential and 13 attorneys' eyes only under the governing 14 protective order in this case. 15 MR. CROCKETT: Okay. 16 BY MR. CROCKETT: 17 Q. Mr. Wohlwend, out of that 6- to 700,000 18 in commissions from the sale of Lifetime's 19 products can you tell us how much of that would 20 have been for sales of table products? 21 A. No, I can't. 22 Q. Would you estimate that it's more than 23 half? 24 A. I wouldn't estimate. I don't know. 25 Q. Okay. Fair enough.</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

12 (Pages 45 to 48)

| | |
|---|---|
| <p style="text-align: right;">Page 49</p> <p>1 Do you have any written—strike that. 2 Does Frontier Northwest—or did 3 Frontier Northwest, during your association with 4 the company, have any written agreement with 5 Lifetime Products with regard to the, Frontier 6 Northwest's representation of lifetime? 7 A. I think there was a contract but I 8 wouldn't guarantee it. There may not have been 9 because we worked without contracts as much as we 10 worked with contracts, if not more, with vendors 11 because once we had verbal agreements and we took 12 on that the implication of us representing that 13 particular vendor was set, and by the laws in the 14 state of Washington you were then represented 15 that—you were represented by the actions even if 16 you didn't have a contract. 17 Q. Okay. Focusing on your agreement—if 18 there is an agreement with Lifetime Products—did 19 you ever come to an agreement with regard to what 20 Frontier Northwest's commissions would be for 21 sales of a product to any particular retailer? 22 A. I think there were agreements per 23 category, probably. I think that's the way it 24 was worked for various parts of the line. 25 Margins may be different and that would denote</p> | <p style="text-align: right;">Page 51</p> <p>1 commission statements from Lifetime? 2 A. I don't, I don't know. I don't know— 3 it would be a file probably. I didn't do that 4 portion of it. As far as I knew I made sure the 5 check got deposited and that we were able to make 6 and meet payroll and all of our expenses. And if 7 it was kept, I would say Lifetime probably has 8 more of a master record than we would be likely 9 to have, and statements. You get a—we are 10 talking specifically Lifetime. I don't—I think 11 they put out a statement that lists the various 12 orders that were shipped, what the cost was and 13 then there is a total and you get a certain 14 amount per dollar amount, less all the other 15 expenses which may be freight, advertising 16 allowances, et cetera. 17 Q. Would it be Frontier Northwest's normal 18 course of business to keep those sort of 19 documents? 20 A. Probably for a little while, but then I 21 made them purge because we had—you'd have boxes 22 of stuff stacked everywhere so—I think we purged 23 whatever the legal time was. 24 Q. Do you know if Frontier Northwest has 25 any written policy with regard to retention of</p> |
| <p style="text-align: right;">Page 50</p> <p>1 varying commissions. 2 Q. Do you recall if those agreements with 3 regard to commissions was ever put into writing? 4 A. I don't recall, but all you'd have to 5 do is to look at the statements, it will tell you 6 what they are. 7 Q. What statements are you referring to? 8 A. I think there's—we get a commission 9 statement. 10 Q. Frontier Northwest gets a commission 11 statement? 12 A. Yeah. 13 Q. From who? 14 A. We get a commission statement from 15 Lifetime. That's how you can tell what the 16 commissions are. 17 Q. And how often would Frontier Northwest 18 get a commission statement from Lifetime? 19 A. Monthly. Generally speaking that would 20 be the case. 21 Q. During your association with Frontier 22 Northwest where would those commission 23 statements—strike than. 24 During your association with Frontier 25 Northwest did the company store or keep those</p> | <p style="text-align: right;">Page 52</p> <p>1 documents or purging of documents? 2 A. No written policy. 3 Q. Okay. Do you recall if Frontier 4 Northwest, during your association with the 5 company, had any written agreement with Lifetime 6 with regard to the scope of Frontier Northwest's 7 representation of Lifetime? 8 A. I don't remember exactly, but I think 9 we had—our agreement was for our territory, which 10 was our general territory, and in general, and it 11 varies per vendor, we would represent the vendor 12 for Washington, Oregon and Alaska and the—then if 13 it were a specific type of thing, we would 14 represent a company—some we did for also Idaho 15 and Montana, which we tried not to do because 16 it's a money loser, having to travel a sparse- 17 populated territory. 18 Q. Did you recall signing any agreement 19 outlining Frontier Northwest's territory in which 20 they would represent Lifetime? 21 A. For Lifetime? 22 Q. Yes. 23 A. I, I don't recall signing one but I may 24 have. We may have had some kind of agreement 25 that, you know, said, you know, we, we are the</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

13 (Pages 49 to 52)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-988-2180

Toll Free: 877-441-2180

Fax: 801-988-2181

| | |
|---|---|
| <p style="text-align: right;">Page 53</p> <p>1 representatives for x states and accounts and 2 such. 3 Q. Do you recall that Frontier Northwest 4 had any agreement with Lifetime with regard to how 5 you would handle information that Lifetime 6 provided you regarding their products? 7 A. I need to understand that question a 8 little more clearly. 9 Q. Okay. Let me see if I can rephrase it. 10 Do you recall during your association 11 with Frontier Northwest-- 12 A. Uh-huh. 13 Q. --did Frontier Northwest have any 14 agreement with Lifetime with regard to how 15 Frontier Northwest would treat information that 16 Lifetime provided to Frontier Northwest? 17 A. I am thinking that you are saying some 18 kind of a written agreement. I don't have--I 19 don't think there was any kind of a written 20 agreement that I recall. If you are thinking of 21 a general agreement, just general business 22 practices would be in place here with respect to 23 the representative and the vendor. 24 Q. And what would, what's your 25 understanding of the terms of such a general</p> | <p style="text-align: right;">Page 55</p> <p>1 MR. LAYCOCK: Objection. Vague as to 2 Lifetime's information. 3 THE WITNESS: No, I don't know. I 4 don't know. 5 MR. CROCKETT: Would this be a good 6 time to take a break? 7 MR. LAYCOCK: Sure. Yeah. 8 MR. CROCKETT: Let's take a few 9 minutes. 10 (Recess taken.) 11 BY MR. CROCKETT: 12 Q. Okay, Mr. Wohlwend. What, what 13 accounts does Frontier Northwest, during your 14 association with Frontier Northwest, do they 15 handle for Lifetime products? 16 A. All accounts in the territory were 17 ours, in Washington, Oregon and Alaska. 18 Q. I don't think we have gone through that 19 list. Can you name those accounts? 20 A. No, that's a whole lot of accounts. 21 Yeah. 22 Q. Okay. Would it include Costco 23 Wholesale? 24 A. Yes, sir. 25 Q. Would that include Eagle Hardware?</p> |
| <p style="text-align: right;">Page 54</p> <p>1 business agreement with regard to information 2 provided by Lifetime? 3 MR. LAYCOCK: Objection. Vague as to 4 information provided by Lifetime. 5 THE WITNESS: I did not have any 6 written agreement. That's all I know, that I, as 7 I recall, that would be it. 8 BY MR. CROCKETT: 9 Q. Okay. I understand that as you recall, 10 there is no written agreement. Do you recall 11 there being any oral agreement? 12 A. No, I don't. If there was any 13 agreement that we were supposed to handle things 14 in a particular way, no, I do not recall that. 15 Q. Just to clarify, is it your testimony 16 that you don't recall if there was any agreement 17 or that there was no agreement? 18 A. I don't recall that there was any 19 agreement. 20 Q. Fair enough. 21 As you recall, during your association 22 with Frontier Northwest, did Frontier Northwest 23 represent Lifetime with regard to agreements with 24 the, the retailers as to how they would treat 25 Lifetime's information?</p> | <p style="text-align: right;">Page 56</p> <p>1 A. Formerly. 2 Q. Do you know, is Eagle Hardware no 3 longer in existence? 4 A. It is not. 5 Q. Do you know if they were purchased by 6 any particular company? 7 A. They were purchased. 8 Q. Do you know who purchased Eagle 9 Hardware? 10 A. I think Lowe's. 11 Q. Do you know if Costco Wholesale was 12 ever referred to as PriceCostco? 13 A. They are the same. 14 Q. Same company? 15 A. (Witness nods head.) 16 Q. Can you describe for us what Frontier 17 Northwest does for Lifetime in representing 18 Lifetime for these various accounts? 19 MR. LAYCOCK: Speaking currently or 20 during the time frame in which he had an 21 interest? 22 BY MR. CROCKETT: 23 Q. Well, let's talk about the time frame 24 during which you were associated with Frontier 25 Northwest?</p> |

14 (Pages 53 to 56)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|--|---|
| <p style="text-align: right;">Page 57</p> <p>1 A. That's awful broad. You need to 2 specify. That's way too broad for me to tell you 3 everything I have done for them or do on a—I 4 give you on a generalized basis. 5 Q. Let's start there. 6 A. We represent them to the various retail 7 and wholesale outlets as their sales arm. 8 Q. When you say you represent them as, 9 Frontier Northwest represents Lifetime as their 10 sales arm, what is involved in, in that, that 11 relationship? What do you mean by— 12 A. We are a manufacturer's representative. 13 There is two things you can do. I should charge 14 you for this. There is two things that you can 15 do to go to market if you are marketing widgets. 16 You can hire a sales force, give them cars, 17 insurance, expense, samples, et cetera, salaries, 18 bonus, dah, dah, dah, dah, dah, and put them 19 out across the United States and the world to try 20 to sell your product. 21 Or you can contract with independent 22 representatives who are already established in 23 those various territories with relationships that 24 pay their own expenses and you know your cost of 25 sales because you pay them a commission and you</p> | <p style="text-align: right;">Page 59</p> <p>1 as to the motivation of Lifetime. 2 THE WITNESS: I would be speculating. 3 I mean, why did this, is your question why did 4 this relationship exist? 5 BY MR. CROCKETT: 6 Q. Well, that's a good question. Start 7 with that. 8 A. Are you asking me that question? 9 Q. Yes. 10 A. They, at that time, were a relatively 11 small company compared to where I, where I think 12 they are now and they, then, chose to take the 13 independent manufacturer's representative route of 14 the two that I just described. That's—you have 15 to go to market with some salesmen some way and 16 that was, at that time that's what they chose. 17 Q. Okay. 18 A. That's the way I understand it. 19 Q. Let's talk more specifically about what 20 Frontier Northwest during your association with 21 the company, what they did for Lifetime. 22 Did Frontier Northwest set up meetings 23 between representatives of Lifetime and 24 representatives of Costco? 25 A. Yes.</p> |
| <p style="text-align: right;">Page 58</p> <p>1 don't have to pay them until they sell something. 2 So you go in when you are doing your costing you 3 know where you are at your cost of sales. It's 4 not all these variables that you have to handle 5 with the company salesmen out there, other than 6 the administrators that you utilize as sales 7 manages, which cuts it into about a tenth. 8 So that's how you go to market. You 9 have a choice, one way or the other. Some 10 companies choose to have their own sales force 11 because they don't like representatives that have 12 other lines that they work and they have, they 13 like to have control. Others choose independence 14 because they feel they do a better job, their 15 relationships are better, they are more 16 professional and they have a closer relationship 17 with their territory because they live there. 18 Q. Okay. Is it fair to say, then, that 19 Lifetime Products came to Frontier Northwest to be 20 their account representative because Frontier 21 Northwest had connections with certain companies 22 in the northwest region that Lifetime wanted to 23 approach? 24 MR. LAYCOCK: Objection. Inconsistent 25 with former testimony. Also calls for speculation</p> | <p style="text-align: right;">Page 60</p> <p>1 Q. Generally would it fall upon Frontier 2 Northwest to set up those meetings rather than a 3 representative of Lifetime to try to set up the 4 meeting? 5 A. Generally, yes. 6 Q. In terms of correspondence, did 7 Frontier Northwest, during your association with 8 the company, serve as the conduit to send letters 9 from representatives of Lifetime to 10 representatives of Costco? 11 A. Let me see if I'm understanding this 12 correctly before I answer. Your, your question is 13 does Lifetime utilize Frontier Northwest to 14 communicate in letters to Costco? 15 Generally, yes, but they would also 16 communicate I think sometimes directly. Generally 17 the Frontier Northwest representatives have a more 18 constant contact and more often with the customer 19 with all their varied companies that they 20 represent than the Lifetime person would have. 21 Q. During your association with Frontier 22 Northwest did you encourage Lifetime Products to 23 communicate with the various accounts— 24 A. No. 25 Q. Let me finish that question.</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

15 (Pages 57 to 60)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|---|---|
| <p style="text-align: right;">Page 61</p> <p>1 Did you encourage Lifetime Products to 2 communicate to the various accounts through 3 Frontier Northwest rather than directly? 4 A. Did we encourage them? I don't know if 5 we encouraged them. I would say, I'd have to say 6 yes, I think so, that that would be a general, a 7 generalized yes. I don't know that we ever said, 8 hey, don't do something, but generally that would 9 have been my unwritten policy, to keep it going 10 through channels because you can keep it cleaner 11 that way. It's easier to know who said what. 12 You guys ought to know that. 13 Q. So is it fair-- 14 A. Your people. 15 Q. Is it fair to say that Frontier 16 Northwest preferred to stay in the loop between 17 Lifetime-- 18 A. Yes. 19 Q. --and accounts? 20 A. That's fair to say. 21 Q. If there were to be a meeting between a 22 representative of Lifetime Products and Costco, 23 would a representative of Frontier Northwest 24 generally be involved in that meeting? 25 A. Yes.</p> | <p style="text-align: right;">Page 63</p> <p>1 Lifetime? 2 A. Yes. 3 Q. Do you recall being in attendance at 4 any meetings wherein table products were 5 discussed? 6 A. I do not recall a specific meeting of 7 any of these in general 'cause I've had so many 8 of them over my tenure, but I am sure that I was 9 at some of the meetings when they did tables. 10 Most of the meetings that I was at was earlier 11 for the basketball backboards because that was our 12 first products that we took there. But the table 13 business came later, when I had gone into a 14 different position managerially with the company 15 in that I had given up a lot of my call status, 16 on-call status, because you go in too much with 17 your salesperson, you disenfranchise them. 18 Q. As I recall, you testified earlier that 19 as far as representing Lifetime with regard to 20 tables, that responsibility fell mainly to Mary or 21 Dan? Is that correct? 22 A. I believe that was, they handled that, 23 if I--as I try to recall, that that they 24 handled, one of them or both or whatever, I don't 25 remember who did what, handled that mainly.</p> |
| <p style="text-align: right;">Page 62</p> <p>1 Q. Can you think of any occasion during 2 your association with Frontier Northwest that a 3 representative of Frontier Northwest was not 4 involved in a meeting between PriceCostco or 5 Costco and Lifetime? 6 A. Can I think of a time? I cannot think 7 of a time. 8 Q. Do you have any reason to believe that 9 there was ever a meeting between a representative 10 of PriceCostco and a representative of Lifetime 11 that took place without a Frontier Northwest 12 representative in attendance? 13 MR. LAYCOCK: Objection. Calls for 14 speculation. 15 THE WITNESS: Do I have reason to 16 believe that? I don't have any reason to believe 17 that other than circumstances happen, i.e., a 18 trade show, if they run into each other. 19 BY MR. CROCKETT: 20 Q. Fair enough. 21 Were you, during your association with 22 Frontier Northwest were you ever personally in 23 attendance at a meeting between a representative 24 of Lifetime and a representative of Costco, 25 PriceCostco, to discuss a product being offered by</p> | <p style="text-align: right;">Page 64</p> <p>1 Q. Do you recall any, any instances when 2 you accompanied Dan or Mary or both on, during 3 meetings between Lifetime and PriceCostco? 4 A. Specific instances? 5 Q. Do you recall any? 6 A. I don't recall any instances 7 specifically. But I know that I have gone in 8 calls with both of them to Costco on various 9 Lifetime Products, but I cannot give you a 10 specific call and, and other products for other 11 companies. That is the cornerstone of that 12 company. And if they are not in there, they are 13 going to get left out. 14 Q. Okay, Mr. Wohlwend. We are going to 15 take a look at a few documents to get your 16 thoughts on, on these. Just as a preliminary 17 I'll let you know that--I will take that. 18 MR. LAYCOCK: May I? 19 MR. CROCKETT: Sure. 20 MR. LAYCOCK: Get a copy of that one 21 for them as well. 22 MR. KRESSIN: Thank you. 23 BY MR. CROCKETT: 24 Q. As a preliminary I'll let you know 25 that--or let me ask you this question: Are you</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

16 (Pages 61 to 64)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-988-2180

Toll Free: 877-441-2180

Fax: 801-988-2181

| | |
|--|---|
| <p style="text-align: right;">Page 65</p> <p>1 aware that Dan Stivers produced certain documents 2 in response to a subpoena from our client to Mr. 3 Stivers? 4 A. I am aware of that. 5 Q. Okay. And are you aware that those 6 documents were designated by counsel for Mr. 7 Stivers with certain identifying numbers? 8 A. No. 9 Q. Okay. 10 A. You mean as in exhibits or as in—you 11 mean just for recordkeeping? 12 Q. Yes, for recordkeeping purposes. And 13 you will see some of those numbers as we go 14 through these documents and I just want to give 15 you a little background first. 16 A. Okay. 17 Q. This is—first of all, I want you to 18 take a look at this document and tell me if you 19 have ever seen this document before. 20 A. I don't know. I mean, this has got a 21 date of 1995 on it. I couldn't tell you, unless 22 I had gotten married that year, about any 23 document. I mean, you can, you can show me 24 10,000 things and I'm not going to tell you that 25 I remember it. I mean, I look on here and I see</p> | <p style="text-align: right;">Page 67</p> <p>1 adjustable. They had one, I guess they did have 2 one, but I didn't think it was six-foot tall— 3 long, I mean. I don't know. Think of this. This 4 is 1995. I don't remember. 5 Q. Fair enough. Let's go ahead and mark 6 this as Exhibit 881. 7 Exhibit-881 marked 8 Mr. Wohlwend, I am putting in front of 9 you now a document that has been previously marked 10 as Exhibit 873 and I'll ask you to take a moment 11 and look that over. It's multiple pages. See if 12 you recognize that document. 13 MR. LAYCOCK: Can I have the last 14 question back, please. 15 (Record was read.) 16 MR. LAYCOCK: So you don't have a 17 question pending on this document, Counsel? 18 MR. CROCKETT: I asked the witness to 19 review the document and see if he recognized the 20 document. 21 THE WITNESS: I don't remember this 22 document. There are some portions that I know as 23 business practices through Costco but I do not 24 remember this specific document. 25 BY MR. CROCKETT:</p> |
| <p style="text-align: right;">Page 66</p> <p>1 Lifetime Leisure and I can go through here and 2 see six-foot folding preassembled picnic table. 3 The model numbers don't mean anything to me. I 4 don't remember the, this thing here. I do 5 remember the table. I don't remember that item. 6 Banquet tables. I do not recall this document in 7 particular. 8 Q. In particular. Before we go any 9 further let's put on the record that the document 10 that the witness is referring to is marked STIV02. 11 Mr. Wohlwend, you indicate—do you recognize any 12 of the subject matter referenced in this document? 13 A. Just as I had said previously, I 14 recognized the six-foot folding preassembled 15 picnic table. 16 Q. And when you say you recognize that— 17 A. I just know it as an item. I mean, I 18 don't know which one it refers to or—I mean, I 19 couldn't go over and you set up seven of them and 20 tell you which one this is referring to. The 21 table kit I do not remember at all. And banquet 22 table, I don't know which one—the tables were 23 introduced when, I don't have any idea when that 24 was done. And it says with adjustable table 25 height. I don't remember that. It said it's</p> | <p style="text-align: right;">Page 68</p> <p>1 Q. Do you recall seeing similar documents 2 from, perhaps came from PriceCostco? 3 A. Yes. 4 Q. Would you characterize this document as 5 one of their standard forms? 6 MR. LAYCOCK: Objection. Calls for 7 speculation. Lack of foundation. 8 THE WITNESS: In my tenure with Costco 9 they have gone through literally hundreds of forms 10 in various times and they have been and they are 11 in a continuing evolution and this obviously is 12 one of those forms which at the time that Price 13 and Costco came together to form PriceCostco, 14 1995, which apparently must be around that time. 15 I don't remember what the dates were. And they 16 were coming into these types of things, trying to 17 nail down, you know, how they were going to do 18 business in a orderly fashion and I would presume 19 this is one of those forms, but I did not 20 remember this form. Okay. 21 BY MR. CROCKETT: 22 Q. Fair enough. Under what 23 circumstances—what is your understanding of the 24 circumstances in which such a form would be 25 executed?</p> |

17 (Pages 65 to 68)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|--|---|
| <p style="text-align: right;">Page 69</p> <p>1 MR. LAYCOCK: Objection. Calls for 2 speculation. Lack of foundation. 3 THE WITNESS: I don't-- 4 MR. LAYCOCK: He has just testified he 5 doesn't have any familiarity with this particular 6 document. 7 THE WITNESS: No, I don't know this 8 document. 9 BY MR. CROCKETT: 10 Q. My question was, what is your 11 understanding of the circumstances in which such a 12 document would be executed. 13 MR. LAYCOCK: Objection. Lack of 14 foundation. Calls for speculation. Also vague as 15 to such a document. 16 THE WITNESS: This document would be 17 used for a vendor that they thought they may be 18 doing business with so that they saw what their 19 business practice was going to be so they could 20 delineate some things in here in some kind of 21 legal terms. That's what it is. 22 BY MR. CROCKETT: 23 Q. When you say--I'm sorry, go ahead. 24 A. But the main thing that I would see 25 here that I would pick up as an independent rep</p> | <p style="text-align: right;">Page 71</p> <p>1 marked right here. 2 Q. Okay. When you say marked, just for 3 the record we are referring to the box next to 4 the name Mary Derheim on the document. And do 5 you know who Vince--who this document is directed 6 to. It says to Vince. 7 MR. LAYCOCK: Objection. Lack of 8 foundation. He has testified that he doesn't-- 9 hasn't ever seen this document. 10 THE WITNESS: Do I know who this is 11 sent to? 12 BY MR. CROCKETT: 13 Q. Yes. 14 A. I mean, I wouldn't bet my son's life on 15 it but I would bet \$10 to a dime that it was sent 16 to Vince Rhoton with Lifetime because you are 17 talking about a banquet table and Vince. 18 Q. So you have no reason to believe that 19 it would come from anyone other than Vince Rhoton 20 at Lifetime? 21 MR. LAYCOCK: Objection. 22 Mischaracterizes the nature of the document. Also 23 misstates whether or not the document is even 24 sent. Lack of foundation. Calls for speculation. 25 THE WITNESS: Am I able to talk to you,</p> |
| <p style="text-align: right;">Page 70</p> <p>1 is insurance. To do business with them you have 2 to have a minimum primary limit of \$2,000,000. 3 That's the thing that I pick up. The rest of it 4 is standard stuff. 5 Q. Okay. Mr. Wohlwend, I am now showing 6 you a document that's been previously marked as 7 Exhibit 862 and I'll ask you to take a look at 8 that document and tell me if you have seen that 9 document before. 10 A. This is from Mary Derheim. It's her 11 writing and she's marked it from her. So she was 12 probably working on these tables. 13 I can't say that I have seen this 1995 14 document. I may have had a copy given to me as a 15 general office procedure in business from her but 16 I, as general as this is, I, I would guess--I 17 won't guess. I have not seen it. 18 Q. Okay. Well, we don't want you to guess 19 about anything. 20 A. I don't know that. I don't know that I 21 have seen it. 22 Q. Okay. You indicate you recognize the 23 handwriting? 24 A. I think this is Mary's handwriting. 25 Looks like it. She says she sent it. It's</p> | <p style="text-align: right;">Page 72</p> <p>1 ask you questions? I don't know what the 2 procedure is. 3 MR. LAYCOCK: If you would like to take 4 a break--when we state an objection and there is 5 a question pending you need to answer the 6 question. If you would like to take a break-- 7 THE WITNESS: Well, I'm not--I mean, I 8 am just trying to be as--you show me something 9 here, I mean, it's not the first time off my 10 block, you know. It says Vince, it says banquet 11 tables, it says the PriceCostco buyer's name and 12 it's from my company and you are going to say, 13 well, you, do you know who this went to? 14 And I am going to say to the best of my 15 ability it's probably gone to Vince Rhoton with 16 Lifetime. 17 Now, duh, that would be the thing that 18 I would say. If I--do I know that this was sent? 19 No, I do not know that. It does not have a mark 20 on it that it was sent that we had during that 21 time. We had a fax machine that marked them when 22 they went through, a little round thing, I think 23 with an x in it. I don't see that on here but 24 that doesn't mean that it was or was not. It 25 says Mary Derheim, who worked for me at that</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

18 (Pages 69 to 72)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|---|--|
| <p style="text-align: right;">Page 73</p> <p>1 time. You know, I'm not—we are not splitting 2 hairs here. This probably went into Lifetime. 3 That would be my guess but I cannot say that it 4 was. 5 BY MR. CROCKETT: 6 Q. About a third of the way down the page 7 there is a name of an individual. Can you read 8 that name? 9 A. Klaus Lambert. 10 Q. Do you know who Klaus Lambert is? 11 A. Yes. 12 Q. Who is Klaus Lambert? 13 A. He is a man that I think at this time 14 was on the office furniture buyer at PriceCostco. 15 Q. When you say office furniture, do you 16 know what categories of products that would 17 encompass? 18 A. Office furniture. That's all I know. 19 Q. Would it encompass, based on your 20 knowledge and your experience with PriceCostco, 21 would it encompass outdoor furniture? 22 MR. LAYCOCK: Objection. Vague as to 23 time. 24 THE WITNESS: I do not know. However, 25 to the best of my knowledge, I would say office</p> | <p style="text-align: right;">Page 75</p> <p>1 A. Actually, I have seen document 863 2 before. 3 Q. Have you seen 864 before? 4 A. No. 5 Q. You have not? 6 A. Not that, not that I recall. 7 Q. Okay. Well, let's talk about 863. 8 Where have you seen this document before? 9 A. I saw it— 10 MR. LAYCOCK: Objection to the extent 11 the question calls for any attorney-client 12 communications that I would advise this witness 13 not to answer. However, to the extent that you 14 can ask yes or no questions relating to time and 15 place, that sort of thing, that would be 16 appropriate. 17 MR. CROCKETT: Okay. I'll repeat my 18 question. 19 BY MR. CROCKETT: 20 Q. Mr. Wohlwend, where have you seen this 21 document before? 22 MR. LAYCOCK: You may answer to the 23 extent that you do not divulge any attorney-client 24 communications. 25 MR. KRESSIN: Just to, I know it's not</p> |
| <p style="text-align: right;">Page 74</p> <p>1 furniture means office furniture and probably 2 indoor stuff. 3 BY MR. CROCKETT: 4 Q. Based on your knowledge of PriceCostco 5 and its products, would you consider a banquet 6 table to be office furniture? 7 A. If I could get it in there under that 8 category, I would consider it to be a commode. 9 Q. Fair enough. 10 MR. KRESSIN: Did you make that an 11 exhibit? 12 MR. CROCKETT: This has been previously 13 marked 862. We would like to make it an exhibit 14 to this deposition as well. 15 Q. Okay, Mr. Wohlwend, I would like you to 16 take a look at another document which has been 17 previously marked Exhibit 864 and tell me if you 18 recognize that document. And let me point out 19 for the record actually what I have handed you 20 are two exhibits, the first page has been marked 21 previously 864 and the second page .863. 22 A. Okay. 23 Q. Have you seen that document before? 24 A. Yes, I have. 25 Q. Okay.</p> | <p style="text-align: right;">Page 76</p> <p>1 my deposition but just to clarify the record, what 2 attorney-client privilege are you claiming? 3 MR. LAYCOCK: I represent Mr. Wohlwend. 4 MR. KRESSIN: Okay. So you are saying 5 this is Mr. Wohlwend's attorney-client privilege 6 that—or that he is invoking? I am just asking. 7 MR. LAYCOCK: I am not here to answer 8 questions. I am also not here to do the double 9 team thing. If you want to take a break and we 10 need to have a discussion, I would be happy to do 11 that. 12 THE WITNESS: So where are we here? 13 BY MR. CROCKETT: 14 Q. Well, the question was, where have you 15 seen this document before? 16 A. I have seen it in this office. 17 Q. Okay. When did you first see this 18 document? 19 A. The first time I saw this document was 20 yesterday. 21 Q. And was that in this office? 22 A. Yes, sir. 23 Q. Do you have some understanding of what 24 this document is? 25 A. Do I understand what this document is?</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

19 (Pages 73 to 76)

| | |
|---|---|
| <p style="text-align: right;">Page 77</p> <p>1 Q. Yes.</p> <p>2 A. I don't really understand that</p> <p>3 question. This is a, just a business page of</p> <p>4 which my business--there are jillions of these</p> <p>5 done all the time. You know, this is just a</p> <p>6 vehide of business. It's kind of a, this is a</p> <p>7 seed, you are planting a seed here and hope that</p> <p>8 it blooms.</p> <p>9 Q. Well, what is, what is the purpose of</p> <p>10 this document, to your understanding?</p> <p>11 MR. LAYCOCK: Objection. Lack of</p> <p>12 foundation as to this document, Exhibit 863.</p> <p>13 THE WITNESS: The purpose of this</p> <p>14 document is to provide information to a customer.</p> <p>15 This specific document is to provide information</p> <p>16 to PriceCostco on a product we are trying to sell</p> <p>17 them and to stimulate the interest in it and get</p> <p>18 the ball rolling on some kind of a program.</p> <p>19 BY MR. CROCKETT:</p> <p>20 Q. When you say a product we are trying to</p> <p>21 sell, who is "we"?</p> <p>22 A. Frontier Northwest.</p> <p>23 Q. Is this referring, is this document</p> <p>24 referring to a Frontier Northwest product?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 79</p> <p>1 based on. And we would then proceed.</p> <p>2 If he says, no, if I have a--Wenzel</p> <p>3 would call me and say, hey, you know, here is our</p> <p>4 new line, look, I've got these five new tents, I</p> <p>5 may see simply pictures of them at first and I'll</p> <p>6 go in and start working, working on selling them,</p> <p>7 absolutely, because I have known the people for</p> <p>8 years in good faith and if I couldn't depend on</p> <p>9 what's going on there, then I, I will eliminate</p> <p>10 them from my portfolio.</p> <p>11 BY MR. CROCKETT:</p> <p>12 Q. Well, do you understand that the model</p> <p>13 2120 that is referenced in Exhibit 863 is a</p> <p>14 product that Lifetime sought to bring into the</p> <p>15 marketplace?</p> <p>16 MR. LAYCOCK: Objection. Lack of</p> <p>17 foundation. Calls for speculation. Also vague as</p> <p>18 to which product.</p> <p>19 THE WITNESS: Well, I don't know what</p> <p>20 product this is. I don't know the model numbers</p> <p>21 or anything and obviously I, other than yesterday</p> <p>22 when I saw this document, I don't remember this</p> <p>23 document because it says here, May of 1995, and</p> <p>24 we've already alluded to that type of situation</p> <p>25 for me remembering something which I do remember.</p> |
| <p style="text-align: right;">Page 78</p> <p>1 Q. And can you identify which product</p> <p>2 that's referenced on this document that is a</p> <p>3 Frontier Northwest product?</p> <p>4 A. Well, on here it's model, whatever this</p> <p>5 one is, 2120, 6-foot banquet table.</p> <p>6 Q. Was this a product manufactured by</p> <p>7 Frontier Northwest?</p> <p>8 A. It was manufactured by a company that</p> <p>9 Frontier Northwest represents. And as I described</p> <p>10 the relationships in manufacturers to the sales</p> <p>11 force, we are, in essence, that sales force.</p> <p>12 Q. Okay. And who is the manufacturer of</p> <p>13 the model 2120 referenced in this document?</p> <p>14 A. Lifetime.</p> <p>15 Q. How do you personally know that</p> <p>16 Lifetime manufactured this product?</p> <p>17 MR. LAYCOCK: Objection. Vague as to</p> <p>18 "this product."</p> <p>19 THE WITNESS: How do I personally know</p> <p>20 that? Well, with my ongoing relationship with the</p> <p>21 company, if they tell me that I have--that they</p> <p>22 have a product that they want to take into the</p> <p>23 marketplace, number one, I take that at face value</p> <p>24 because I have an enduring relationship of good</p> <p>25 faith and integrity, which is what my company is</p> | <p style="text-align: right;">Page 80</p> <p>1 So anything that I would say about this I would</p> <p>2 have to deduce that this is what this is, this is</p> <p>3 what it was about and it would be general</p> <p>4 information.</p> <p>5 But this is a price quote that was</p> <p>6 apparently given to Mary Derheim from Vince</p> <p>7 Rhoton, Lifetime Products, and from that, that's</p> <p>8 what I know.</p> <p>9 BY MR. CROCKETT:</p> <p>10 Q. Have you ever seen a six-foot banquet</p> <p>11 table as described in this document?</p> <p>12 A. Six-foot, seventeen inch . . . I</p> <p>13 thought that the one with telescoping legs was,</p> <p>14 was a different narrower, shorter table, that</p> <p>15 there was one that had telescoping legs but I</p> <p>16 don't remember this table specifically. I mean,</p> <p>17 the tables that seemed to be the ones that over</p> <p>18 time that have been the premier table that was</p> <p>19 sold by Lifetime was a six-foot table that did</p> <p>20 not have telescoping legs, I think.</p> <p>21 Now, this is not, this was not my area</p> <p>22 of expertise, Lifetime tables, so the specifics of</p> <p>23 it I can't tell you because generally Dan and</p> <p>24 Mary handled this arena. My expertise is in more</p> <p>25 camping, of tents, sleeping bags, backpacks on a</p> |

20 (Pages 77 to 80)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-683-2180

Toll Free: 877-441-2180

Fax: 801-683-2181

Page 81

1 personal specific product level.
 2 Q. Did Dan and Mary--Dan and/or Mary keep
 3 you informed regarding their efforts to market
 4 banquet tables for Lifetime?
 5 A. Yes, they would have. They did.
 6 Q. Do you recall them discussing these
 7 products with you?
 8 A. I--
 9 MR. LAYCOCK: Objection. Vague as to
 10 these products.
 11 BY MR. CROCKETT:
 12 Q. Specifically I am referring to a
 13 banquet table product such as referred to in
 14 Exhibit 863.
 15 MR. LAYCOCK: Objection. Vague as to
 16 product.
 17 THE WITNESS: I don't remember them
 18 discussing whatever this is with me. When I saw
 19 this yesterday I didn't know what table this is.
 20 So...
 21 BY MR. CROCKETT:
 22 Q. If I could ask you to take a look at
 23 863 again for one more moment.
 24 A. Uh-huh.
 25 Q. You'll notice that in the, under the

Page 82

1 description of the product there is a UPC code.
 2 Do you see that?
 3 A. Yes.
 4 Q. What is your understanding of what a
 5 UPC code is?
 6 A. I know what it is.
 7 Q. Well, could you describe to us what it
 8 is?
 9 A. UPC is a universal product code that
 10 anyone that sets up an account can get that will
 11 give an item a number so that it can be referred
 12 to specifically.
 13 Q. Do you--generally, not talking
 14 specifically about this product, but generally
 15 what's your understanding of when a UPC code is
 16 assigned to a product, where in the life cycle of
 17 a product is a UPC code assigned?
 18 MR. LAYCOCK: Objection. Lack of
 19 foundation. Calls for speculation.
 20 THE WITNESS: Probably varies per
 21 individual that handles product from a factory
 22 level. Many do not get UPC codes along, until
 23 developments may be into more of an advanced
 24 stage. Some people do it when they to packaging.
 25 Some give it, give it a number as soon as they

Page 83

1 get the idea and get it set up for the line.
 2 UPC codes you can get in a second.
 3 They are not anything, it's not like you got to
 4 go sign a big, fill out a big super form. It's
 5 not a big deal to get one. You can get one in a
 6 day or a half a day or whatever. So it's--the,
 7 the time that you get one is, it can vary. I
 8 mean, it can vary from, really, according to how
 9 good of a planner somebody is or how far advanced
 10 they are.
 11 BY MR. CROCKETT:
 12 Q. Okay. I would ask you to take a look
 13 inside the box on the document. Over to the
 14 right-hand side, sales manager, Vince Rhoton. Did
 15 I read that correctly?
 16 A. Yes.
 17 Q. Do you know Vince Rhoton?
 18 A. Yes.
 19 Q. Who is Vince Rhoton?
 20 A. He is with Lifetime. He was at that
 21 time apparently the sales manager. I'm sure he
 22 was at that time.
 23 Q. Did, as you recall, during your
 24 association with Frontier Northwest, did Vince
 25 represent Lifetime with regard to basketball

Page 84

1 products?
 2 A. Yes.
 3 Q. Right under the, Mr. Rhoton's name
 4 there's words saying "terms: Net 30." What does
 5 that mean to you?
 6 A. That the--they want somebody to--that's
 7 a standard term. They want somebody to pay them
 8 in 30 days of shipping or 30 days of receipt. It
 9 varies per vendor.
 10 Q. Could you elaborate on what you mean by
 11 they would want to be paid within 30 days of
 12 receipt of what?
 13 A. Of the product.
 14 Q. Just below the description of the
 15 product there are a couple lines. The first line
 16 says, "price is FOB factory." Do you see that?
 17 A. Uh-huh.
 18 Q. And right below that could you read the
 19 next line.
 20 A. I can read it.
 21 Q. Okay. Could you read it out loud for
 22 us.
 23 A. "See attached item agreement for
 24 additional terms and conditions."
 25 Q. What is your understanding of an item



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

21 (Pages 81 to 84)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-683-2180

Toll Free: 877-441-2180

Fax: 801-683-2181

| | |
|---|--|
| <p style="text-align: right;">Page 85</p> <p>1 agreement?</p> <p>2 A. An item agreement with Costco,</p> <p>3 PriceCostco, is a form that is an ever-evolving</p> <p>4 information sheet that you fill out the best you</p> <p>5 can to start getting all the product information</p> <p>6 that is necessary to really make a detailed</p> <p>7 presentation to Costco in an effort to facilitate</p> <p>8 a transaction.</p> <p>9 Q. Is an item agreement an agreement</p> <p>10 between PriceCostco and the manufacturer, based on</p> <p>11 your understanding?</p> <p>12 MR. LAYCOCK: Objection. Vague as to</p> <p>13 time. Also lacks foundation.</p> <p>14 THE WITNESS: So is the, is the item</p> <p>15 agreement—make sure I say this correctly—is the</p> <p>16 item agreement an arrangement between the vendor</p> <p>17 and PriceCostco?</p> <p>18 BY MR. CROCKETT:</p> <p>19 Q. Specifically.</p> <p>20 A. What it is is an information sheet.</p> <p>21 It's an information sheet that goes into detail as</p> <p>22 to everything about the product, the terms and</p> <p>23 conditions and everything that we have garnered,</p> <p>24 all the information to get to them. It's an</p> <p>25 information sheet, really. I mean, it, for</p> | <p style="text-align: right;">Page 87</p> <p>1 calculating, to go into an item agreement. So</p> <p>2 that then an evaluation, an educated evaluation,</p> <p>3 can be made by the committee that looks at it so</p> <p>4 they make a decision.</p> <p>5 If they were thinking about buying</p> <p>6 something, where is this thing going to come out?</p> <p>7 How is it going to work? There is just a ton of</p> <p>8 information that's on this thing. So what they</p> <p>9 are trying to do is to garner up all the</p> <p>10 information and, and that information changed all</p> <p>11 the time, even during the process of trying to</p> <p>12 determine what this, these were.</p> <p>13 For example, on an item that you are</p> <p>14 importing, if the carton size changed a little bit</p> <p>15 the quantity that would go into a 40-foot</p> <p>16 container, ch, ch, ch, ch, would all change. I</p> <p>17 mean, just, you go, My gosh, I got to refigure</p> <p>18 all the freight, I got to go back. That's the</p> <p>19 kind of thing this is all about. So what you are</p> <p>20 doing is try to provide the very best detailed</p> <p>21 information so that when you going—working with a</p> <p>22 Costco, you know, every penny is important because</p> <p>23 they are a big company. So that's how they stay</p> <p>24 sharp and in business.</p> <p>25 Q. Well, based on your experience with</p> |
| <p style="text-align: right;">Page 86</p> <p>1 example, if you take this sheet here—what's it</p> <p>2 say here?</p> <p>3 Q. You are pointing to where it says</p> <p>4 quote?</p> <p>5 A. Quote.</p> <p>6 Q. Yes.</p> <p>7 A. Okay. This is a starter. This is that</p> <p>8 seed I talked about. If you get the opportunity</p> <p>9 to go to the next step, then you do an item</p> <p>10 agreement, which garners more information than is</p> <p>11 here. So that now you got a—have you seen an</p> <p>12 item agreement sheet?</p> <p>13 Q. I believe I have seen one, yes.</p> <p>14 A. Okay. And they vary. For example, I</p> <p>15 would guess that the item agreement sheet that was</p> <p>16 during this—what's the date on this? May, '95.</p> <p>17 It is different than the one is today. It was an</p> <p>18 ever-involving information sheet as Costco found</p> <p>19 out that they needed more and more information</p> <p>20 before they could make a decision whether or not</p> <p>21 they were interested in these products at various</p> <p>22 prices, various configurations, pallet quantities,</p> <p>23 shipping points, freight costs. There is enormous</p> <p>24 evaluations that go into one single page. There</p> <p>25 is an enormous amount of preparation and figuring,</p> | <p style="text-align: right;">Page 88</p> <p>1 Frontier Northwest and your dealings with</p> <p>2 PriceCostco, would PriceCostco want as much</p> <p>3 detailed information about a new product as they</p> <p>4 could get when you present them a quote?</p> <p>5 A. Only if they are really interested in</p> <p>6 it or, my company is pretty well ingrained with</p> <p>7 PriceCostco. Sometimes we would go ahead and fill</p> <p>8 out a item agreement form hoping that we'd already</p> <p>9 done a bunch of the work, that if we get a lazy</p> <p>10 buyer they don't want to get doing too much of</p> <p>11 this, that we had already done the work and we</p> <p>12 were taking a step further and being prepared,</p> <p>13 trying to be aggressive and on the good peddler</p> <p>14 side.</p> <p>15 I have done many of these item</p> <p>16 agreements that go in the round file in the</p> <p>17 floor, that get thrown away.</p> <p>18 Q. Well, generally what could the Costco</p> <p>19 buyer do with an item agreement?</p> <p>20 A. Throw it away or they just look at it</p> <p>21 and see if they are interested in that. They</p> <p>22 would go, oh, okay, so they—oh, okay, let me see</p> <p>23 what this is going to come out here, because if I</p> <p>24 go in there with this, this quote, okay? I</p> <p>25 guarantee you that what's on here, the way this</p> |

22 (Pages 85 to 88)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101
801-983-2180 Toll Free: 877-441-2180 Fax: 801-983-2181

| | |
|---|---|
| <p style="text-align: right;">Page 89</p> <p>1 is, and when that item agreement, if it was, if 2 this is the widget, okay? we are talking about 3 the widget, we are not talking about a banquet 4 table, we are talking about a widget, so it could 5 be anything. 6 I take this in there like this and I've 7 got the information that I have right now on an 8 item agreement that that will not be the way it 9 ends up because that's what the buyer is for, to 10 negotiate the price, the terms, the quantity, the 11 freight, the FOB point and all those things. 12 This is the seed. 13 If the buyer took it on face value, 14 right there I would fire his ass. 15 MR. LAYCOCK: The record should reflect 16 that the witness was referring to Exhibit 863 at 17 this point. 18 MR. CROCKETT: Okay. 19 MR. KRESSIN: Can I have just a second, 20 please? 21 MR. LAYCOCK: Are we going off the 22 record? 23 MR. KRESSIN: Yeah, let's do that. 24 (Discussion off the record.) 25 BY MR CROCKETT:</p> | <p style="text-align: right;">Page 91</p> <p>1 Q. Is it your understanding that this was 2 a letter that was directed to you? 3 A. Yes. 4 Q. Can you confirm that you ever received 5 this letter? 6 A. No. What date does that say? 7 Q. Well, I see August 10, 1995. Is that 8 what you see? 9 A. That's what I see. 1995 is the day I 10 turned 50 years old. 11 Q. Do you recall if you resided in Kent, 12 Washington on August 10, 1995? 13 A. I must have. That's what the, the 14 address is. I am sure I did. 15 Q. Is that your address in Kent, 16 Washington? 17 A. Yes. 18 Q. The first paragraph of this document, 19 the second sentence, and you follow along as I 20 read this, see if I am reading this accurately. 21 As you know, Life--as you know, Leisure 22 is a division of Lifetime products and presently 23 produces picnic tables. 24 Did I read that correctly? 25 A. Yes.</p> |
| <p style="text-align: right;">Page 90</p> <p>1 Q. One more question about Exhibit 863, 2 Mr. Wohlwend. 3 Within the box on the document can you 4 tell who this quote is directed to? 5 A. It says Klaus Lambert. 6 Q. And, again, just to clarify the record, 7 who is Klaus Lambert? 8 A. He is a buyer at PriceCostco. 9 Q. Okay. Mr. Wohlwend, putting in front 10 of you a document that's been identified as 11 STIV067. I am going to ask you if you would 12 please take a look at that and see if you 13 recognize that document. 14 A. Do I recognize this? 15 Q. Yes. 16 A. I have seen this before. I saw it 17 yesterday, similar to--I think this was one I saw. 18 Q. Do you recall seeing this document 19 prior to yesterday? 20 A. No. 21 Q. Can you tell who this document is 22 directed to? 23 A. Yes. 24 Q. And who is it? 25 A. To Steve Wohlwend.</p> | <p style="text-align: right;">Page 92</p> <p>1 Q. As of August 10, 1995 do you know of 2 any other table products that Lifetime was 3 producing besides picnic tables? 4 A. No, I don't know. 5 Q. You don't know that they were or you 6 don't recall? 7 A. I don't recall. 8 Q. During your association with Frontier 9 Northwest and Lifetime did you gain any knowledge 10 about the, the management, the mode of management 11 of the Lifetime company? 12 A. You would have to be a little more 13 specific for me to answer that to the best of my 14 ability. 15 Q. Okay. Did you gain any understanding 16 of about how Lifetime is managed? 17 A. Philosophically or in staff line? I 18 mean, I'm not, I'm still not clear--when you say 19 how Lifetime is managed as--I can give you a 20 general characterization of their business style 21 or I could say, well, this time I think that it 22 looks like Vince got moved over to a different 23 category and Richard Henrickson was doing 24 something else. You know, you tell me which way 25 to go here.</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

23 (Pages 89 to 92)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-683-2180

Toll Free: 877-441-2180

Fax: 801-683-2181

| | |
|--|---|
| <p style="text-align: right;">Page 93</p> <p>1 Q. Let's start generally.</p> <p>2 A. Generally, Lifetime has been, in my</p> <p>3 experience with them, probably in the top three of</p> <p>4 the finest companies that we have ever dealt with.</p> <p>5 And we have dealt with a good number of major</p> <p>6 companies in the United States. They are very</p> <p>7 high on integrity, honesty, forthrightness, all of</p> <p>8 those types of things that you want your vendor</p> <p>9 to be. And responsive, ship on time, competitive,</p> <p>10 all that kind of thing.</p> <p>11 Wenzel is the other one that's like</p> <p>12 that and I would say Acorn. Those are the top</p> <p>13 three in my 25 to 30-year career of being really</p> <p>14 world class companies.</p> <p>15 I have had some that are problems.</p> <p>16 I'll give you an example. Rubbermaid. Have you</p> <p>17 heard of Rubbermaid?</p> <p>18 (Discussion off the record.)</p> <p>19 BY MR. CROCKETT:</p> <p>20 Q. We will go back on the record. I think</p> <p>21 the question pending for Mr. Wohlwend, yes, I have</p> <p>22 heard of Rubbermaid. Let's continue the</p> <p>23 discussion of this document that's in front of</p> <p>24 you, which we need to mark as an exhibit, by the</p> <p>25 way. This is identified as STIV067 and we would</p> | <p style="text-align: right;">Page 95</p> <p>1 Q. Well, I would like to ask you if you</p> <p>2 could remember what he was concentrating on in</p> <p>3 1995.</p> <p>4 A. No. If you read down here further, it</p> <p>5 says he is going to be responsible for something</p> <p>6 else. I didn't go any further.</p> <p>7 Q. Do you know what his responsibility is</p> <p>8 today at Lifetime?</p> <p>9 A. No.</p> <p>10 Q. Okay. I'd like for you to take a look</p> <p>11 at a document that's been identified as STIV068</p> <p>12 and ask you if you recognize that document.</p> <p>13 A. Done reading.</p> <p>14 Q. Have you seen this document before?</p> <p>15 A. No.</p> <p>16 Q. Okay. Just let me ask you, do you</p> <p>17 know, do you recognize the name of the recipient</p> <p>18 or the apparent recipient of this letter?</p> <p>19 A. I don't remember this person.</p> <p>20 Q. Could you just read the name for the</p> <p>21 record?</p> <p>22 A. Mr. Michael Day.</p> <p>23 Q. But you don't remember who he is?</p> <p>24 A. No, I do not.</p> <p>25 Q. Okay. Do you--have you ever heard of</p> |
| <p style="text-align: right;">Page 94</p> <p>1 like to make this--mark it with the next exhibit</p> <p>2 number, whatever that may be.</p> <p>3 Exhibit-882 marked</p> <p>4 Okay. So now this document has been</p> <p>5 marked as Exhibit 882.</p> <p>6 Mr. Wohlwend, I would like for you to</p> <p>7 take a look at the first paragraph, first</p> <p>8 sentence, where it says, "On behalf of the</p> <p>9 steering committee of Lifetime Products we are</p> <p>10 pleased to announce the promotion of Vince Rhoton</p> <p>11 to Vice President of Sales and Marketing of</p> <p>12 Lifetime Leisure."</p> <p>13 Do you know who the steering committee</p> <p>14 at Lifetime Products is?</p> <p>15 A. No.</p> <p>16 Q. Have you ever heard of a steering</p> <p>17 committee at Lifetime Products?</p> <p>18 A. No.</p> <p>19 Q. Do you know who Richard Henrickson is?</p> <p>20 A. Yes.</p> <p>21 Q. And who is Richard Henrickson?</p> <p>22 A. He is an employee of Lifetime.</p> <p>23 Q. And do you know what his, what product</p> <p>24 line he concentrates on for Lifetime?</p> <p>25 A. Currently?</p> | <p style="text-align: right;">Page 96</p> <p>1 PriceCostco International which is referred to in</p> <p>2 the second paragraph?</p> <p>3 A. Yes.</p> <p>4 Q. How is Price--or is PriceCostco</p> <p>5 International related to Costco Wholesale?</p> <p>6 A. They own it. It's just an</p> <p>7 international division.</p> <p>8 Q. Did Frontier Northwest serve as an</p> <p>9 account rep to PriceCostco International?</p> <p>10 A. Whenever we could.</p> <p>11 Q. Did you represent any of, did you</p> <p>12 represent Lifetime Products to Costco?</p> <p>13 A. I think so, yes.</p> <p>14 Q. Do you--</p> <p>15 A. I think so, that we did.</p> <p>16 Q. Do you have any recollection of what</p> <p>17 products of Lifetime you would have represented to</p> <p>18 PriceCostco International?</p> <p>19 A. No.</p> <p>20 Q. We will go ahead and mark STIV068 as an</p> <p>21 exhibit to this deposition. And I believe it</p> <p>22 would be 883.</p> <p>23 Exhibit-883 marked</p> <p>24 All right. Mr. Wohlwend, now I am</p> <p>25 going to show you a document that's been</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

24 (Pages 93 to 96)

| | |
|--|--|
| <p style="text-align: right;">Page 97</p> <p>1 identified as STIV319. And ask you to take a 2 look at that and see if you recognize it. 3 A. No. 4 Q. Do you recognize who the recipient of 5 this document is? 6 A. Sender Vince Rhoton to Mary Derheim. 7 Q. And is this—do you recognize the 8 e-mail address of Mary Derheim? Have you seen 9 that before? 10 A. Down at the bottom? 11 Q. Well, it is— 12 A. Is this the one you, that you are 13 saying—this here? 14 Q. Yes. 15 A. Do I recognize that? 16 Q. Yes. 17 A. No, I don't recognize it. I didn't do 18 e-mail or have anything to do with it until about 19 the last year. 20 Q. Okay. About two-thirds of the way down 21 there is a note—or the text reads, "Mary, please 22 pass this on to Donna and Susan. Thanks, Vince." 23 Does Frontier Northwest have any 24 employees with the first name of Donna or Susan. 25 or did they—let me rephrase that.</p> | <p style="text-align: right;">Page 99</p> <p>1 look at a document that's been previously marked 2 as Exhibit 868 and see if you recognize that. 3 A. Done. 4 Q. Have you seen this document before? 5 A. No, sir. 6 Q. After reading through that document do 7 you, have you ever heard before of a model 2130 8 table, four-person folding preassembled picnic 9 table? 10 A. Ever heard of a 2130? 11 Q. Yes. 12 A. I have no idea what the numbers are. I 13 have heard of a four-person folding picnic table. 14 Four-person. It was a shortened table I think to 15 hit a price point but I, I have no idea as to 16 model numbers in conjunction with the product. 17 Q. Good. Fair enough. 18 A. I don't know. And I would have to see 19 pictures or an example to know what these are 20 talking about. 21 Q. Okay. Do you recall if Lifetime 22 Products marketed a four-person folding 23 preassembled picnic table? 24 A. I thought they did. To my 25 recollection, I think they did. We were trying</p> |
| <p style="text-align: right;">Page 98</p> <p>1 Did Frontier Northwest have any 2 employees by the name of Donna or Susan in 3 October of 1996? 4 A. No. 5 Q. Do you know who this, who Donna and 6 Susan, who they would be referring to here? 7 A. (Witness shakes head.) 8 Q. No? 9 A. No. 10 Q. Okay. Now I would like you to take a 11 look at a document that's been identified as 12 STIV337 through STIV341. And I'll ask you to 13 take a moment and look that over and let me know 14 when you are finished. 15 A. Done. 16 Q. Have you seen this document before, any 17 of these documents that are stapled together? 18 A. No, sir. 19 Q. Do you know who Rick Noegel is? 20 A. Rick Noegel was a buyer at Eagle 21 Hardware. 22 Q. Is that the same Eagle Hardware that we 23 discussed earlier today? 24 A. Yes. 25 Q. Okay. I would like for you to take a</p> | <p style="text-align: right;">Page 100</p> <p>1 to come up with an item that was for a price 2 point and that would fit in the smaller vehicle. 3 Q. What about an eight-person folding 4 preassembled picnic table, do you recall 5 Lifetime— 6 A. I think that's the full-size picnic 7 table in the traditional terms. 8 Q. What do you mean by in the traditional 9 terms? 10 A. In the traditional term as an eight- 11 person—as you picture a picnic table out on the 12 park, out in the park that you see at the public 13 park or whatever, usually it's a table top with 14 seats that go on each side and four people, there 15 is enough room for four people to sit on each 16 side. 17 Q. Okay. Do you recall that Lifetime 18 Products marketed an eight-person folding 19 preassembled picnic table with removable benches? 20 A. No, I don't. I, I remember—no. The 21 removable—I saw this picture on that last paper. 22 Wasn't that one? Let me look at that document, 23 please. 24 Q. Sure. 25 A. This picnic table is different. I saw</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

25 (Pages 97 to 100)

| | |
|--|---|
| <p style="text-align: right;">Page 101</p> <p>1 this but I don't remember this table at all. 2 MR. LAYCOCK: The record should reflect 3 that the witness is referring to control number 4 000341. 5 MR. CROCKETT: That's STIV341, just to 6 be complete. 7 MR. LAYCOCK: Yes, thank you. 8 THE WITNESS: You see the difference, 9 this has got some square tubing here I can see 10 and this is round tubing. That's what I noticed 11 first but I don't know that—I never did anything 12 with a table like this. 13 MR. LAYCOCK: Once again, the same 14 reference to Stivers 000341. 15 THE WITNESS: 229.99. I would have 16 never promoted that. 17 BY MR. CROCKETT: 18 Q. If I can ask you to take a look at the 19 bottom, near the bottom of Exhibit 868 there is a 20 cc. Who is that cc to? 21 A. Dan Stivers, Frontier Northwest. 22 Q. Okay. 23 A. He got copied on this document. 24 Q. Are you familiar with the meeting that 25 is referenced in this document?</p> | <p style="text-align: right;">Page 103</p> <p>1 Q. What do you mean by buying group? 2 A. That's what they are, they are a buying 3 group. Worldwide Distributors is a buying group 4 not unlike Sports, Inc., Worldwide. They are an 5 accumulation of retailers that join together in an 6 association to enhance their buying power so that 7 they can compete in the market with the mass 8 merchants that have the enormous buying capacity. 9 Q. Would you characterize it, then, as a 10 cooperative retailer? 11 A. No, it's not a co-op. Not a co-op. A 12 co-op is different. It's a buying group. They 13 are a member and they pay a certain percentage of 14 their purchases to be a member to support the 15 group and make, they make coordinated purchases. 16 They have their own trade shows that bring in the 17 various vendors and it helps some of the smaller 18 businesses survive. 19 Q. Based on your experience with Frontier 20 Northwest, has Frontier Northwest ever received a 21 document such as this one from Lifetime Products 22 before? 23 A. I don't know. I've never seen one like 24 this before. Worldwide Distributors. Worksheet 25 only, dah, dah, dah. This is just an information</p> |
| <p style="text-align: right;">Page 102</p> <p>1 A. No, I'm not. This is in, October 28. 2 This document is from October 28, 1996. This is 3 2004. No, I do not remember anything to do with 4 this. 5 Q. Okay. Did we identify this as an 6 exhibit as Deposition Exhibit 868? If we didn't, 7 we just did. 8 Okay. Mr. Wohlwend, I would like you 9 to take a document that's been identified as 10 STIV—would you read that number down there for 11 me? 12 A. Triple zero 953. 13 Q. Thank you. 14 I'll ask you if you can take a moment 15 and look at that. Let me know when you are 16 finished. 17 A. Done. 18 Q. Have you seen this document before? 19 A. No, sir. 20 Q. Do you know who Worldwide Distributors 21 is? 22 A. Yes. 23 Q. Who is Worldwide Distributors? 24 A. They are a buying group out of Kent, 25 Washington.</p> | <p style="text-align: right;">Page 104</p> <p>1 sheet, obviously. 2 What was your question again? I don't 3 know what—I mean, I haven't seen this before. 4 Q. I understand. 5 A. I don't that we have ever had one of 6 these before. This looks like an internal 7 document for Worldwide. This is my impression. 8 And this is not a Frontier Northwest form. 9 Q. Do the words worksheet only have any 10 meaning in your business? Is that a term of art 11 of any sort? 12 A. It means, it means it's just a— 13 worksheet only, do not use as quote. This is an 14 information sheet, I guess, that just says—I 15 don't know whose this is. 16 Q. Well, when you say worksheet only, do 17 not use as quote, is it your understanding that a 18 quote carries— 19 A. It's Lifetime here. I see. It must, 20 this must be a sheet from Lifetime. Is that 21 correct? This is an internal Lifetime sheet, as 22 far as you know, or do you know? 23 Q. I do not know. 24 A. I do not know either. My first 25 impression was this was a document from Worldwide</p> |

26 (Pages 101 to 104)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101
801-683-2180 Toll Free: 877-441-2180 Fax: 801-683-2181

| | |
|--|--|
| <p style="text-align: right;">Page 105</p> <p>1 Distributors but I don't know. Now I look at it 2 some more, it looks like it may be just a listing 3 sheet from Lifetime that denotes a customer and 4 information. 5 Q. Would you characterize a quote as 6 something that's more significant than a worksheet 7 as far as the information that's being provided? 8 A. Can you repeat that to me, please. 9 (Record was read.) 10 According to the extent of the 11 information on each one. 12 Q. Well let me ask you, does a document 13 that's referred to as a quote, does that, the 14 word quote carry any significance to you? Is 15 that, is that a term of art in your business? 16 A. Quote is a term in our business. 17 Q. What does that mean to you? 18 A. Just starting to get your, you're 19 gathering up pricing, product information. You 20 got to start bringing the, start, you are starting 21 to bring together information. There might be 22 several quotes. In fact, there generally is. 23 Q. Okay. Let's mark this document STIV953 24 as the next exhibit. 25 Exhibit-884 marked</p> | <p style="text-align: right;">Page 107</p> <p>1 A. I have met her before but on a business 2 basis. I wouldn't recognize her right now if I 3 saw her. 4 Q. Do you know what department of Costco 5 she represents as a buyer? 6 A. No, I do not. 7 Q. Do you know who Steve Nye is? 8 A. Yes. 9 Q. Did you know Steve Nye in 1997? 10 A. Yes. 11 Q. And how did you know Mr. Nye? 12 A. Through representing Lifetime. He is 13 an employee of theirs. 14 Q. Have you personally met Mr. Nye? 15 A. Sure. 16 Q. On more than one occasion? 17 A. Sure. 18 Q. Did Mr. Nye ever come to travel to 19 Frontier Northwest to meet with you? 20 A. Yes, sir. 21 Q. Do you recall the circumstances of that 22 meeting? 23 A. No, I do not. To give you a 24 generalization, he was a vendor or factory 25 support, comes in, and he is a really smart man</p> |
| <p style="text-align: right;">Page 106</p> <p>1 The record will reflect that this has 2 been marked as Exhibit 884. Okay. We are 3 finished with that one. 4 I would like for you to take a look at 5 a document that's been previously marked as 6 Exhibit 866 and I'll ask you to review that and 7 let me know when you are finished. 8 A. I've got a little difficulty reading 9 some of this. If you have a clearer copy to get 10 down into here. I don't know what that word is 11 down in here. 12 Q. I am afraid we do not have a clearer 13 copy than what you have in front of you. 14 A. Done. 15 Q. Have you ever seen this document 16 before? 17 A. No, I have not. 18 Q. Do you know who Deanne Witt is? 19 A. She is at this time apparently a buyer 20 at Costco. What she is doing now, I don't know. 21 Q. Other than basically what you see on 22 this document, do you have reason to believe that 23 Deanne Witt is a buyer for Costco? 24 A. Yes. 25 Q. Do you know her?</p> | <p style="text-align: right;">Page 108</p> <p>1 that's got good developmental engineering. 2 capabilities, knows production and development and 3 those types of things and, and just use him as an 4 asset in those types of situations. 5 Q. Based on your understanding, why would 6 Mr. Nye come and visit Frontier Northwest rather 7 than a salesman or in addition to a salesman? 8 A. We often have ancillary people come as 9 support. Several reasons. It's good to have a 10 lot of people come from the factory that are the, 11 in the management area, shows interest to the 12 customer, answers any questions hands-on that they 13 may have as to the, what's going on with the 14 company, what's happening with product, so on, so 15 forth, and he is one of those people. It's just 16 another service that we offer to the customer of 17 bringing in the appropriate individuals to help 18 them become comfortable with the vendor. 19 Q. And do you recall if Mr. Nye met at any 20 time with, with the account, such as PriceCostco? 21 A. I did have him go—or we did I think go 22 in and visit with PriceCostco. How many times 23 and specifically when, I don't remember, but I'm 24 going to say that he did meet with PriceCostco. 25 Q. Would Mr. Nye make these visits when</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

27 (Pages 105 to 108)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-985-2180

Toll Free: 877-441-2180

Fax: 801-985-2181

| | |
|--|---|
| <p style="text-align: right;">Page 109</p> <p>1 Lifetime was introducing a new product?</p> <p>2 MR. LAYCOCK: Objection. Lack of</p> <p>3 foundation.</p> <p>4 THE WITNESS: That would--are you</p> <p>5 asking is that the only time he would visit?</p> <p>6 BY MR. CROCKETT:</p> <p>7 Q. Well, is that a time that he would</p> <p>8 visit, when Lifetime was introducing a new</p> <p>9 product?</p> <p>10 A. Boy, I'd be--they visit when we request</p> <p>11 them, usually. Or if they have an interest in</p> <p>12 what's going on, you know, there's, there's</p> <p>13 periodic visits during a relationship on an</p> <p>14 annualized basis and as Frontier Northwest we try</p> <p>15 to keep control of those so that they are just</p> <p>16 the right balance between you're not aggravating</p> <p>17 the customer too much but you are giving them</p> <p>18 enough attention that they feel comfortable with</p> <p>19 you.</p> <p>20 Now, how--when he came in, whether it</p> <p>21 was to facilitate one of those types of visits,</p> <p>22 setting a new program, you know, it's that time</p> <p>23 of the year to start evaluating, I don't know,</p> <p>24 but generally, in a good company, every visit</p> <p>25 would be either setting a new program or showing</p> | <p style="text-align: right;">Page 111</p> <p>1 getting the communication scenario going and we</p> <p>2 just try to always stay on it.</p> <p>3 If there's new categories that you're</p> <p>4 venturing into or somebody is thinking about, we</p> <p>5 are that far ahead, we may say something to the,</p> <p>6 to the company and say, you know, what's your</p> <p>7 experience in widgets with tails?</p> <p>8 And they say, well, we don't like those</p> <p>9 or, oh, never heard of that, maybe that would be</p> <p>10 something, you got some ideas? Well, we may</p> <p>11 have. Talk to you later. But you are always</p> <p>12 planting seeds and it's kind of like taking care</p> <p>13 of a kid, you know, you got to keep something</p> <p>14 held out there for them so that the interest</p> <p>15 continues on as you try to nurture the growth.</p> <p>16 Q. Do you recall Mr. Nye being involved in</p> <p>17 meetings with PriceCostco where there were</p> <p>18 discussions of a new product being offered by</p> <p>19 Lifetime?</p> <p>20 A. No.</p> <p>21 Q. Do you recall ever providing feedback</p> <p>22 from PriceCostco to Mr. Nye regarding any product</p> <p>23 that PriceCostco was seeing, a new Lifetime</p> <p>24 product that--</p> <p>25 A. Me providing feedback to Mr. Nye</p> |
| <p style="text-align: right;">Page 110</p> <p>1 some new products or innovations or having a</p> <p>2 brainstorming session with the customer. So those</p> <p>3 are the types of meetings that we generally would</p> <p>4 have. We don't just have them come in for a</p> <p>5 howdy-do. We make sure that there's some good</p> <p>6 concrete things going on.</p> <p>7 Q. So when you say brainstorming session,</p> <p>8 could you elaborate on what you mean by that? As</p> <p>9 far as meetings with the end client, the account,</p> <p>10 and Mr. Nye</p> <p>11 A. Oh, I can't give you any speculation on</p> <p>12 that one, that particular combination, no. I can</p> <p>13 give you speculation on like what I do with my</p> <p>14 client. We are talking with them and we know of</p> <p>15 them fairly intimately and I know the account,</p> <p>16 what their customer is, what their operations, how</p> <p>17 they, how they function and to, to continually</p> <p>18 communicate with the buyers and their staff to try</p> <p>19 to see what they are thinking so that I can also</p> <p>20 help direct various vendors in their development.</p> <p>21 For example, if I make a--if we are a</p> <p>22 vendor of sleeping--beds, for example, and my</p> <p>23 vendor is starting to go off on a big tangent of</p> <p>24 making singles and they are really going for</p> <p>25 kings, I got to pack them back into line. Just</p> | <p style="text-align: right;">Page 112</p> <p>1 directly?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. To any of the engineers at Lifetime?</p> <p>5 A. Probably have, but I don't recall any.</p> <p>6 It was my job to feedback, but I don't recall</p> <p>7 specifically. I mean, we are doing, we are</p> <p>8 feeding back on a continuing basis and saying that</p> <p>9 this color is no good, they don't like that</p> <p>10 color, give me some others, I need to have a</p> <p>11 different color for this area or a--I mean, those</p> <p>12 kinds of things are what we do. It's ongoing.</p> <p>13 Now, as far as specifically giving</p> <p>14 feedback on a particular thing, I don't remember</p> <p>15 any specifics that I did. No. This is 1997.</p> <p>16 Q. I understand that.</p> <p>17 Generally, do you have any recollection</p> <p>18 of communicating with engineers within Lifetime</p> <p>19 regarding features that a customer would like to</p> <p>20 see in the new product?</p> <p>21 A. No, I don't remember anything like that</p> <p>22 specifically. No. Or in general. I don't, I</p> <p>23 don't remember what it would have been or what it</p> <p>24 was. I mean, I could develop you some scenarios</p> <p>25 here but I probably was involved in but I do not</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

28 (Pages 109 to 112)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|---|---|
| <p style="text-align: right;">Page 113</p> <p>1 remember. Sure don't.</p> <p>2 Q. Okay. Referring again to the Exhibit</p> <p>3 866, in the first indented paragraph it references</p> <p>4 to a DuraTable two-in-one table. Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what a DuraTable two-in-one</p> <p>8 table is?</p> <p>9 A. No, I do not. It says a removable</p> <p>10 bench frame, which may be similar to what I</p> <p>11 hadn't seen before but I don't know that. It</p> <p>12 says no number there. If there was a number, we</p> <p>13 could maybe reference back to that picture we had.</p> <p>14 Q. All right.</p> <p>15 A. But I don't, I don't know what that is.</p> <p>16 Q. Okay. Do you recognize the handwriting</p> <p>17 on this document, the notes that are made here?</p> <p>18 A. Well, I was looking to see if it was my</p> <p>19 handwriting and I don't know because it's</p> <p>20 practically readable and mine is usually not. But</p> <p>21 I do not recognize it definitively, no, I don't.</p> <p>22 Q. Okay. If we haven't already, we would</p> <p>23 like to make this document an exhibit to the</p> <p>24 deposition. It was previously marked 866.</p> <p>25 All right, Mr. Wohlwend. I am putting</p> | <p style="text-align: right;">Page 115</p> <p>1 indication that, that Mary Derhelm and Steve</p> <p>2 Wohlwend went on this trip.</p> <p>3 A. Looks like I was earning my money.</p> <p>4 Q. Do you have any recollection after</p> <p>5 reading this trip report, any remembrance of this</p> <p>6 trip?</p> <p>7 A. No. You might note there, and Steve</p> <p>8 Wohlwend went with us as well.</p> <p>9 Q. Yes.</p> <p>10 A. That wasn't necessarily a common thing</p> <p>11 every time. You can see that this was more of a</p> <p>12 cameo appearance probably on my part.</p> <p>13 Q. Well, what sort of situation would you</p> <p>14 make an appearance if you wouldn't usually?</p> <p>15 A. Just because I felt like it.</p> <p>16 Q. You had some extra time that day to</p> <p>17 travel to Seattle?</p> <p>18 A. Probably. Probably. Well, it's not</p> <p>19 very far.</p> <p>20 Q. Do you use e-mail now in your business?</p> <p>21 A. Yes.</p> <p>22 Q. Did you in 1997?</p> <p>23 A. I don't think so.</p> <p>24 Q. Do you, do you know what is meant in</p> <p>25 the last paragraph there that says, Steve</p> |
| <p style="text-align: right;">Page 114</p> <p>1 in front of you a document that's been marked</p> <p>2 Exhibit 867 previously and if you would please</p> <p>3 take a look at that and let me know when you are</p> <p>4 finished reviewing it.</p> <p>5 A. Done.</p> <p>6 Q. First I'll ask if you have seen this</p> <p>7 document before.</p> <p>8 A. No.</p> <p>9 Q. Do you recognize the subject matter of</p> <p>10 this, of this document?</p> <p>11 A. Seems like the follow-up to the</p> <p>12 document previous.</p> <p>13 Q. And what do you mean by follow-up?</p> <p>14 A. Let me see the document previous so</p> <p>15 that I'm not misstating here. We are supposed to</p> <p>16 be full of truth. January 28, January 28, 1997.</p> <p>17 I appreciate the chance to meet with you.</p> <p>18 This is a trip report that was done the</p> <p>19 day after this meeting on Exhibit STIV418.</p> <p>20 Q. Can you tell us who the trip report—</p> <p>21 who generated this trip report based on what you</p> <p>22 see in this document?</p> <p>23 A. It says here done by Vince Rhoton.</p> <p>24 Q. There's indication in the first</p> <p>25 paragraph—correct me if I'm wrong—there is</p> | <p style="text-align: right;">Page 116</p> <p>1 emphasized to Deanne that we have missed having</p> <p>2 them as an account? Did I read that directly?</p> <p>3 A. Steve emphasized to Deanne that we</p> <p>4 missed having them as an account. I see that.</p> <p>5 Q. Do you know what, what Mr. Rhoton meant</p> <p>6 by that?</p> <p>7 MR. LAYCOCK: Objection. Lack of</p> <p>8 foundation. Calls for speculation.</p> <p>9 THE WITNESS: I don't know what he</p> <p>10 meant by that, but I would presume it's, we were</p> <p>11 going to do some business and they haven't been</p> <p>12 doing business for a little bit.</p> <p>13 BY MR. CROCKETT:</p> <p>14 Q. Do you have a recollection that there</p> <p>15 was a period of time prior to January 29, '97</p> <p>16 when Costco and Lifetime were not doing business?</p> <p>17 A. No, there was not a period of time. I</p> <p>18 think this is referring to this category.</p> <p>19 Q. And what category were we referring to,</p> <p>20 just so the record is clear?</p> <p>21 A. To the, whatever category that this</p> <p>22 Deanne Witt was buying, which would be—I don't</p> <p>23 know what it was, actually. I don't know what</p> <p>24 her category is, but we were—in my mind I don't</p> <p>25 think I ever was out selling basketball equipment</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

29 (Pages 113 to 116)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-988-2180

Toll Free: 877-441-2180

Fax: 801-988-2181

| | |
|--|--|
| <p style="text-align: right;">Page 117</p> <p>1 to them, did not lose that business. I did not 2 lose that business. 3 Q. Does the first paragraph of the 4 report-- 5 A. Oh, lawn and garden buyer. Right 6 there. She was a lawn and garden buyer. 7 Q. Do you recall that to be the case? 8 A. I was thinking maybe she was the 9 furniture buyer from office furniture but she is 10 lawn and garden. My involvement was minimal, but 11 still controlled exposure. 12 Q. Okay. If we didn't already, we want to 13 make Exhibit 867 an exhibit to this deposition. 14 I would like for you to take a look at 15 a document that's been previously marked 867. 16 A. 869. 17 Q. I'm sorry, 869. And there are several 18 pages attached. If you would take a look at 19 those and let me know when you are finished. 20 A. Done. 21 Q. Okay. Have you seen the front page of 22 this exhibit before? 23 A. I don't remember it if I have, so I 24 answer no. 25 Q. Do you know who Scott Hines is?</p> | <p style="text-align: right;">Page 119</p> <p>1 So ... 2 Q. Well-- 3 A. This looks more familiar. As you can 4 see here it's an easier picture to, to get a grip 5 on than the dark colored one. I'll show you. 6 But that's not, that's not a familiar one. 7 Q. Okay. We will make that Exhibit 869 to 8 this deposition. 9 Okay, Mr. Wohlwend, I would like you to 10 take a look at a document that's been identified 11 as STIV0447 and take a moment to review that and 12 let me know when you are finished. 13 A. Done. 14 Q. Have you seen this document before? 15 A. No, I have not. 16 Q. Are you familiar with the subject 17 matter of this document? 18 A. I am after looking at it, yes. 19 Q. Do you have any recollection of a 20 meeting that is referred to in this document? 21 A. I do not. 22 Q. If you could just take a look at the, 23 there is a section toward the bottom that's, there 24 is a bold heading, freight, with a few bullet 25 points under it:</p> |
| <p style="text-align: right;">Page 118</p> <p>1 A. Scott Hines, I know the name, is a 2 buyer at Costco--or was a buyer at Costco. 3 Actually, I don't think he was the buyer, I think 4 he was an assistant. That's--but I'm not sure 5 about that. 6 Q. Okay. Do you recall in what product 7 area Scott Hines was an assistant buyer? 8 A. I think he was an assistant for Deanne 9 Witt. And I am deducing that because on page two 10 she is listed up there under Costco and I think 11 he was an assistant. This is 1997, so it's hard 12 for me. 13 Q. After reviewing these documents do you 14 have any further recollection regarding this model 15 2150 table that's depicted in the last two sheets? 16 A. This looks like the same table that I 17 had looked at the first--at the previous 18 documents. Especially this, which is triple 0441. 19 This color sheet shows the product 20 better and has a more familiar look to me it. 21 And it's document 455. But this is not the 22 Lifetime picnic table that I, you know, that I 23 have in my mind that I remember having carried 24 around and, and seen and had, you know. This is 25 not the one. This has got square tubing on it.</p> | <p style="text-align: right;">Page 120</p> <p>1 A. (Witness nods head.) 2 Q. Just for the record I'll read this. It 3 says, "confirm the size of pallet that will be 4 used." 5 The next bullet is "Helen Haertl would 6 like to see us load more product on the trailer. 7 Can the product be double stacked?" 8 And the next bullet, "how many units 9 will fit on a 53' and a set of doubles? Double 10 stacked?" 11 First let me ask you, do you know who 12 Ellen Haertl is? 13 A. Yes. 14 Q. Who is Ellen Haertl? 15 A. She is a freight specialist for Costco. 16 Q. So based on what you've read here and 17 these bullet points, can you explain to us or do 18 you understand what Ms. Haertl's request is? 19 A. Yes, I understand it. 20 Q. Could you explain it for us? 21 A. Which part? 22 Q. Well, she asked, can the product be 23 double stacked. What does that mean? 24 A. One pallet on top of a stack of another 25 pallet. Here is a pallet. Here is the product</p> |

30 (Pages 117 to 120)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|--|--|
| <p style="text-align: right;">Page 121</p> <p>1 here. Comes up, say, four high. Forklift, pallet, 2 shh, step, can we put it on here without damaging 3 this product. It's double stacked. 4 Q. Based on your understanding of, of 5 Lifetime Products and their organization, who 6 within that organization would determine if the 7 product could be double stacked? 8 A. I don't know. 9 Q. You don't know who this request would 10 go to within Lifetime? 11 A. Well, it would go to an engineer sooner 12 or later. That's where it's got to be answered. 13 They have to go out and test it, see if there is 14 damage. How does it fit in, the height of the 15 original pallet, can it fit into the height of 16 the, of the big cube or whichever one they are 17 talking about here. 18 Q. Right. 19 A. And can the product stand in its 20 packaging format, stand the weight of the next one 21 that's got to be equal to this one. 22 Q. Okay. I understand. 23 A. Okay. 24 Q. And the last bullet point, could you 25 explain to us, if you know, what is meant by the</p> | <p style="text-align: right;">Page 123</p> <p>1 Q. Okay. Have you seen this document 2 before? 3 A. No. 4 Q. Okay. 5 A. No. 6 Q. Are you at all familiar with the 7 subject matter that's discussed in this document. 8 MR. LAYCOCK: Objection. Lack of 9 foundation. 10 THE WITNESS: These are the trailer 11 load drawings out of R & D. And, our engineer 12 says we have not yet tried to try to do the 360 13 pieces. It is a matter of inches but it should 14 work. 15 Come back over here on A, 53-foot 16 trailer it shows 384 tables, tables that must be 17 working with. 18 Third page is 48-foot trailer says 360 19 tables and they have done a configuration here and 20 that's what I presume, I don't know what table it 21 is but, and it doesn't list it so I don't know. 22 BY MR. CROCKETT: 23 Q. Based on these drawings do you 24 understand that those are representing pallets-- 25 MR. LAYCOCK: Objection. Lack of</p> |
| <p style="text-align: right;">Page 122</p> <p>1 number 53 with a quote mark? 2 A. Sure. 53-footer. That's the truck 3 size of a trailer. 4 Q. Okay. And what is meant by a set of 5 doubles? 6 A. Tandems. 7 Q. That's the situation where you have one 8 trailer in front of the other? 9 A. (Witness nods head.) 10 Q. Okay. And, again, based on your 11 understanding, who would make a determination of 12 how many units would fit on a 53-foot trailer? 13 A. One of the engineers. They would 14 either do a mathematical calculation or do a load. 15 We would always preferred loads; gives you a real 16 number. 17 Q. Okay. We would like to have this 18 document STIV447 marked as the next exhibit 19 number. 20 Exhibit-885, marked. 21 Mr. Wohlwend, I would like you to take 22 a look at a document that's been identified as 23 STIV0452. Just review that and let me know when 24 you are finished. 25 A. Done.</p> | <p style="text-align: right;">Page 124</p> <p>1 foundation. 2 THE WITNESS: Yes. 3 BY MR. CROCKETT: 4 Q. Pallets stacked on the trailer? 5 A. That is my interpretation. 6 Q. Okay. Let's mark this document STIV452 7 as the next exhibit. 8 Exhibit-886 marked 9 Okay. I would like for you to take a 10 look at a document that's been identified as 11 STIV--would you read the rest of it? 12 A. 527. 13 MR. KRESSIN: 527. 14 BY MR. CROCKETT: 15 Q. Just take a moment to look at that and 16 let me know when you are finished. 17 A. Done. 18 Q. Have you seen this document before? 19 A. No, sir. 20 Q. Are you familiar with the subject 21 matter of this document? 22 A. The appointment? Yes. I mean, I can 23 see that he's make--he's confirming an appointment 24 to visit regarding tables. 25 Q. Before you just reviewed the document</p> |

31 (Pages 121 to 124)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-988-2180

Toll Free: 877-441-2180

Fax: 801-988-2181

| | |
|---|---|
| <p style="text-align: right;">Page 125</p> <p>1 just now did you have any knowledge regarding this 2 appointment that's discussed? 3 A. Did I have any knowledge of this, of 4 this appointment? 5 Q. Yes. 6 A. Not to my recollection. I mean, it 7 does not surprise me that there is an appointment 8 that Mr. Stivers has done, but I don't recollect 9 this appointment. This is, this appointment was 10 October 28--what year? 1997. No, I do not. 11 Q. If you could take a look at the 12 paragraph that's directly beneath the bold type 13 date and time, it's one sentence in that paragraph 14 and it makes reference to a new addition to our 15 line, an indoor-outdoor banquet table. Did I read 16 that correctly? 17 A. Yes, sir. 18 Q. Are you familiar with a product 19 referred to as an indoor-outdoor banquet table? 20 A. I don't know what item that is 21 specifically. But if they had a number and a 22 picture sheet like we've looked at previously I 23 would say that would be easier to tell. 24 Q. Do you recognize this as being a 25 document produced on Frontier Northwest</p> | <p style="text-align: right;">Page 127</p> <p>1 Q. How do you know Mr. Curtis? 2 A. Just through sales meetings and trade 3 shows and visiting Lifetime's offices and factory. 4 Q. So is Mr. Curtis in sales for Lifetime? 5 A. I don't think he is. Not now. I think 6 he was at one time but I--my--and I'm not sure 7 about this, but it seems that my latest 8 recollection was that he was on some other special 9 product--projects and I do not know what that is, 10 but he was in sales at one time. 11 MR. LAYCOCK: Can I have that answer 12 back, please. 13 (Record read.) 14 THE WITNESS: Would you like me to 15 clarify that? 16 BY MR. CROCKETT: 17 Q. No, I'm fine with that answer. 18 A. It was kind of fumbled, I apologize. 19 Q. If you would like to clarify your 20 answer, please feel free to do so. 21 A. I think that he was--I know to the best 22 of my knowledge that he was in sales at one time 23 but I don't know that he is currently. I think 24 he is, does some other position at Lifetime. 25 Sorry about the confusion.</p> |
| <p style="text-align: right;">Page 126</p> <p>1 letterhead? 2 A. Yes, sir. 3 Q. Let's go ahead and mark this as the 4 next exhibit. 5 Exhibit-887 marked 6 (Recess taken.) 7 Mr. Wohlwend, I would like for you to 8 take a look at another document and I'll--first 9 let me just ask you to hold onto that one. Just 10 slide it out of your way, we may make reference 11 to that one again 12 If you could take a look at this 13 document, review it and let me know when you are 14 finished. 15 A. Done. 16 Q. Okay. Do you know Michael Long? 17 A. No. 18 Q. Do you know Barry Mower? 19 A. Yes. 20 Q. And who is Barry Mower? 21 A. He owns Lifetime. 22 Q. Okay. Do you know Bill Curtis? 23 A. Yes. 24 Q. Who is Bill Curtis? 25 A. Mr. Curtis is an employee of Lifetime.</p> | <p style="text-align: right;">Page 128</p> <p>1 Q. That's fine. 2 If you could take a look at the last 3 page of this document with the color 4 representation of what appears to be a table and 5 ask if you've seen the, the product that's 6 depicted in the document. 7 A. Have I seen this product? 8 Q. Yes. 9 A. This product looks more kind of like 10 the Lifetime product that I am familiar with. 11 But the legs seem a little different but I--this 12 specific one I, I am trying to think whether the 13 ones that I am familiar with have a flat bar like 14 this or have some kind of legs that come down to 15 where they are, the end points are on the ground. 16 This one seems like it would be a 17 problem for stability should you hit an uneven 18 level. But, anyway, that's just my observations. 19 I don't remember what they looked like exactly. 20 Q. So is it your testimony that you have 21 not seen this particular product before? 22 A. I don't remember. 23 Q. Okay. If you could take a look at 24 paragraph seven in the document that's in front of 25 you. Do you have any knowledge regarding the</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

32 (Pages 125 to 128)

| | |
|---|---|
| <p style="text-align: right;">Page 129</p> <p>1 subject matter of paragraph seven? If you would, 2 please, if you would just read paragraph seven out 3 loud for the record. 4 A. In an attempt to interest Sam's Club in 5 purchasing the table Mr. Curtis and Mr. Mower told 6 me that Costco had already agreed to test market 7 Lifetime's new table. From their statements to me 8 I understood that Costco had agreed to purchase 9 the new table for resale in at least some of 10 their retail stores. 11 Q. Do you have any recollection that? 12 A. No. 13 Q. Costco had agreed to test market the 14 table depicted in that drawing or that-- 15 A. No. 16 Q. --Image? 17 A. This, this reference, as I go back up 18 to paragraph number two, says from April, 1979 19 through November, 1979. I have no, I have no 20 recollection. 21 Q. So can you confirm that this meeting 22 took place? 23 A. No. 24 Q. Can you, can you deny that this meeting 25 took place?</p> | <p style="text-align: right;">Page 131</p> <p>1 MR. CROCKETT: So is this a Lifetime 2 document. 3 MR. LAYCOCK: That's my understanding 4 it was. If you 5 MR. CROCKETT: I had never-- 6 MR. LAYCOCK: If you would like to 7 correct the record on that I, or if you have any 8 other view of that document, I would be happy to 9 hear it; although my understanding is that is a 10 document that is not public, never has been. 11 MR. CROCKETT: I am just trying to 12 understand who is asserting confidentiality in 13 this document. 14 MR. LAYCOCK: I think that document has 15 already been marked as confidential, attorneys' 16 eyes only, subject to the protective order in this 17 case. I am very concerned that it might be 18 declared publicly in any format. 19 MR. CROCKETT: Is this Life, is 20 Lifetime claiming confidentiality in this 21 document? That's all I am trying to understand. 22 MR. SEARS: I think you are familiar 23 with the providence of the document. It came 24 from, I believe, if my recollection is correct, it 25 came from Forthgear. Before they were represented</p> |
| <p style="text-align: right;">Page 130</p> <p>1 A. I can't do either. 2 MR. LAYCOCK: Objection. Lack of 3 foundation. Calls for speculation. 4 BY MR. CROCKETT: 5 Q. Do you have any knowledge whatsoever 6 about the subject matter of paragraph seven? 7 A. I do not. 8 Q. Okay. Yes. Let's make this the next 9 exhibit. 10 Exhibit-888 marked. 11 MR. SEARS: Counsel, when I have seen 12 this document previously it's had a 13 confidentiality designation on that. There 14 doesn't appear to be one here. I just didn't-- 15 MR. LAYCOCK: And I express my concern 16 that a document which we know to be confidential 17 and subject to the court's protective order is 18 shown without any designation. 19 MR. CROCKETT: Are you asserting that 20 this document is confidential? 21 MR. LAYCOCK: Absolutely. 22 MR. CROCKETT: And whose 23 confidentiality is being asserted? 24 MR. LAYCOCK: Whose confidentiality? 25 At Lifetime.</p> | <p style="text-align: right;">Page 132</p> <p>1 by counsel they had not given a confidentiality 2 designation to it. Once they were represented by 3 counsel and realized that their, respecting their 4 commitments to Lifetime required a confidentiality 5 designation they asserted it and eventually you 6 were asked-- 7 MR. CROCKETT: Okay, as long as the 8 record is clear, you are asserting confidentiality 9 in Forthgear in this document. Is that correct? 10 MR., SEARS: Forthgear 11 MR. LAYCOCK: If it's marked with a 12 confidential designation, Counsel, under the 13 protective order in this case it doesn't matter to 14 me, it is irrelevant to me whether or not it 15 comes from one source or another. If it's a 16 confidential attorneys' eyes only document, we are 17 going to treat it as such. And unless and until 18 it's been redesignated or undesignated as 19 confidential, attorneys' eyes only, it shouldn't 20 be shared. That's my concern. That's what I am 21 stating. 22 MR. CROCKETT: Okay. Well, we 23 appreciate that. I just wanted to clarify who's, 24 who was asserting confidentiality. 25 MR. LAYCOCK: To me it's irrelevant.</p> |

33 (Pages 129 to 132)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-683-2180

Toll Free: 877-441-2180

Fax: 801-683-2181

| | |
|--|---|
| <p style="text-align: right;">Page 133</p> <p>1 If it's confidential and attorneys' eyes only 2 under the protective order in this case, it is 3 what it is and it should be protected as such. 4 MR. CROCKETT: Okay. Well, we can 5 disagree on whether it's relevant, who is 6 asserting confidentiality. I just wanted to 7 understand for the record who is asserting 8 confidentiality. 9 MR. SEARS: For the record, we are 10 going to be designating this exhibit as 11 confidential, attorneys' eyes only. Is that 12 correct? 13 MR. LAYCOCK: We have done so. 14 MR. KRESSIN: The exhibit--wait a 15 minute. Let me make sure. We are not talking 16 about Long's declaration because Long's 17 declaration is the exhibit. Now, this is an 18 exhibit to the exhibit, maybe, so I just want to 19 make sure what we're, what we are, what we 20 MR. LAYCOCK: Any format that includes 21 that document which is confidential. 22 MR. KRESSIN: What I'm saying-- 23 MR. LAYCOCK: It shouldn't, it can't be 24 shared. If you want to share the first two pages 25 of the declaration publicly, I am not going to</p> | <p style="text-align: right;">Page 135</p> <p>1 separately from this deposition. 2 MR. KRESSIN: Yes. Yes. 3 MR. LAYCOCK: But for this deposition's 4 purposes it should be marked appropriately before 5 it's--even if it's attached to some other exhibit. 6 MR. KRESSIN: That's my point. 7 MR. LAYCOCK: Yes. 8 MR. KRESSIN: Okay. 9 MR. LAYCOCK: For clarity of the record 10 I'll indicate that the third physical page of what 11 is now marked as Exhibit Number 888 is attorneys' 12 eyes only and confidential subject to all the 13 protections of the governing protective order in 14 this case. And that page should be treated as 15 such. 16 MR. KRESSIN: And, again, we will 17 reserve the right to disagree with you subject to 18 some protection because I'm not sure that--well, I 19 am just not sure exactly as to the heritage of 20 this document. 21 MR. LAYCOCK: In contrast I feel sure. 22 BY MR. CROCKETT: 23 Q. Okay, Mr. Wohlwend, I would like to 24 direct your attention to a table that's here in 25 the room with us. It's a blue table leaning</p> |
| <p style="text-align: right;">Page 134</p> <p>1 assert any issues relative to those two pages, but 2 if there is something that's marked and designated 3 as confidential, attorneys' eyes only, that's my 4 concern. 5 MR. KRESSIN: We said that the exhibit 6 in this three pages would be the exhibit. 7 MR. LAYCOCK: Right. 8 MR. KRESSIN: And I think what you are 9 saying is the exhibit to the exhibits. 10 MR. LAYCOCK: Every reference I have 11 made has been made specifically to this page that 12 has been attached to the declaration of Michael 13 Long. 14 MR. KRESSIN: Okay. 15 MR. CROCKETT: Okay. We understand 16 that the exhibit to the Michael Long declaration 17 has been designated as confidential, attorneys' 18 eyes only. 19 MR. LAYCOCK: We would like to treat it 20 as such in every instance. 21 MR. KRESSIN: Somehow we need--why 22 don't we finish this and go back and address this 23 issue because we need to do something with it. 24 We can't just stick it in here. 25 MR. LAYCOCK: Well, we'll address that</p> | <p style="text-align: right;">Page 136</p> <p>1 against the wall and I believe it has an exhibit 2 number on it. It is Exhibit 870. If you would-- 3 if you need to take a moment and look at it, if 4 you would like to get up and look at it any 5 closer, that's fine. Have you seen this table 6 before today? 7 A. I saw it yesterday. 8 Q. And where did you see it yesterday? 9 A. Right where it is. 10 Q. Had you ever seen this table before 11 yesterday? 12 A. Not to my knowledge. However, I was 13 advised 14 BY Mr. Stivers that this table came from our 15 office and had been there for some time and I do 16 not remember that table. So be it to my memory 17 or not being very observant or whatever, I don't 18 recognize that table. 19 Q. So based on your recollection you, you 20 couldn't dispute Mr. Stivers' recollection 21 regarding where that table came from? 22 A. No. I don't, I don't know where that 23 table came from. Other than--I would not dispute 24 him to begin with if he knows about something 25 definitely that I do not know or have not taken</p> |



Thacker + Co LLC
Court Reporters
Utah's Leader in Litigation Support

34 (Pages 133 to 136)

Page 137

1 note of in a specific manner.
 2 Q. Okay. That being said, do you have any
 3 recollection that this table was ever used in
 4 Frontier Northwest offices?
 5 A. I do not have any recollection.
 6 Q. Do you have any recollection that this
 7 table was ever in your home?
 8 A. No.
 9 Q. No, it was not ever used—
 10 A. I don't have any recollection that this
 11 was in my home.
 12 Q. Does that mean it could have been in
 13 your home, you just don't recall?
 14 A. I am sure there is a lot of things
 15 could have been in my home I don't know about,
 16 but I don't remember this one so, no, I don't
 17 remember. I don't remember this table, period,
 18 until yesterday, when I saw this table, at time
 19 which I don't remember a blue table, period. I
 20 just don't, no.
 21 Q. Do you recall a blue picnic table that
 22 was produced by Lifetime?
 23 A. I recall a green and several colors of
 24 off green and beige and speckled and the bone
 25 colors and that, but I don't remember that either

Page 138

1 now. Be that as it may, that's my memory. The
 2 blue is not there for me.
 3 MR. CROCKETT: If we could take just a
 4 couple minutes to talk, I think we can finish up.
 5 MR. LAYCOCK: Okay.
 6 MR. CROCKETT: Let's go off the record.
 7 (Recess taken.)
 8 Okay. We have no further questions of
 9 the witness.
 10 MR. LAYCOCK: Thank you. I have just a
 11 follow-up question.
 12 EXAMINATION
 13 BY-MR. LAYCOCK:
 14 Q. I would like you to take a look at what
 15 has been previously marked as Exhibit Number 888.
 16 Now, I noted as you read through the document
 17 that at some point you sort of laughed and I'd
 18 like you to explain what that was about.
 19 A. Neither Mr. Mower nor Mr. Curtis asked
 20 me to keep our meeting, Lifetime's new table or
 21 Costco's test market—marketing should be marketing,
 22 confidential. I am not aware of any obligation
 23 that required me or Sam's Club to keep these
 24 subjects confidential.
 25 That is one of the most blatant things

Page 139

1 that a buyer can do. It's—I don't know about
 2 the legalities of it but my buyers would never do
 3 that and my people would never do that. You do
 4 not talk out of school and you are obligated to
 5 not give, when people bring new products in to a
 6 customer you do not as Mr. Buyer tell the next
 7 guy about that new product. That's a given in
 8 our business. And if you do, your integrity is
 9 in, in major jeopardy. It's immoral.
 10 Many times that I go in, in fact, often
 11 in my people that I deal with are—know that, you
 12 know, you bring something new in to them, they
 13 don't talk because the next person coming in could
 14 be your major competitor. And if they gave that
 15 subject, if they told that about it, you know,
 16 why you'd just quit doing business with them
 17 because you can't operate like that. It would,
 18 it would break down the whole process.
 19 And this Mr. Michael Long was in this
 20 category for a very, obviously a very short time.
 21 And I can understand why, because he obviously is
 22 not a professional and you, you don't do that.
 23 That is totally immoral, lack of integrity. You
 24 have confidential, there is confidentiality coming
 25 in all these things. It's against, you are

Page 140

1 brushing up against sharing pricing, you are
 2 brushing up against sharing specifications, you
 3 are brushing up against things that are given out.
 4 And if this guy is telling this, you know, and he
 5 even says here on a new table, never do you do
 6 that. And if they did, I would go right to the
 7 president of their company and I'd have them.
 8 They would not last very long at that company.
 9 That's just something you don't do. I would be—
 10 I am very surprised to see that.
 11 I couldn't believe it from Sam's. That,
 12 that just questions their integrity in their
 13 buying offices.
 14 Q. In your experience in working with
 15 Lifetime did you understand that Mr. Mower or Mr.
 16 Curtis would have requested that new product
 17 offerings be kept confidential?
 18 A. We, we stated that before meetings. We
 19 go in with a new product, we would say, This is a
 20 new product, this is for your eyes only, this is
 21 confidential and we—you need—they all says,
 22 absolutely. You know, the people that we dealt
 23 with at Costco would never dare to say something
 24 to another vendor or competition or something like
 25 that. That's just an absolute kiss of death.



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

35 (Pages 137 to 140)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-683-2180

Toll Free: 877-441-2180

Fax: 801-683-2181

Page 141

1 MR. CROCKETT: Could we repeat the last
2 question, please.
3 (Record read.)
4 MR. CROCKETT: Well, I think if there
5 is any objection there, it's that Mr. Wohlwend
6 cannot speculate regarding what Mr. Mower or Mr.
7 Curtis may have been thinking with regard to--
8 MR. LAYCOCK: I didn't ask--the
9 question doesn't reflect what their thinking may
10 or may not have been. I asked for his
11 understanding, which I think he stated.
12 I have no further questions at this
13 time.
14 MR. CROCKETT: Okay. We have a couple
15 more questions.
16 MR. LAYCOCK: Then I may have some
17 follow-up then.
18 FURTHER-EXAMINATION
19 BY-MR.CROCKETT:
20 Q. Mr. Wohlwend, you testified that, as I
21 understand it, that it is your general business
22 practice to keep information that Lifetime
23 provides to you confidential.
24 A. Yes, sir.
25 Q. Is that--

Page 142

1 A. Yes, sir.
2 Q. Okay. Now, is there any written
3 agreement to, to specify your obligation to
4 Lifetime with regard to keeping information
5 confidential?
6 MR. LAYCOCK: Objection. Asked and
7 answered.
8 THE WITNESS: What was the objection
9 again?
10 MR. LAYCOCK: Asked and answered
11 previously at today's deposition.
12 THE WITNESS: I don't remember whether
13 we had some written disclosure sheets. I have
14 gone in with disclosure sheets on products but I
15 don't remember what they were. But we would
16 often preface our meetings with, this is new, you
17 know, new development, in development, that kind
18 of terminology, so that we would say, you know,
19 this is confidential, this is confidential. We,
20 we know that those buyers, other than within their
21 realm of their business group there, they will
22 share that with their assistant. If they weren't
23 in the meeting, they would share it with the
24 assistant GMM and with the GMM, which are the
25 general merchandise managers and that, but it

Page 143

1 would stay within that family of business
2 associates, not outside of that, it will not go,
3 and that's the way it's understood to be.
4 And I have often said, Hey, this is
5 brand new, it's not out there yet so we keep that
6 inside this room. They know that.
7 BY MR. CROCKETT:
8 Q. How do you know what they know?
9 A. Because I tell them. I work with them.
10 Years and years of experience and history. I
11 base my livelihood off of integrity, back and
12 back--back and forth to the same customer over and
13 over and over again and if one of my customers
14 overtly did something that showed that they had
15 betrayed that confidentiality or trust, I would go
16 to their management and report it and they would
17 be either released or severely chastised.
18 Q. Do you know if Costco's buyers were
19 ever asked to sign a confidentiality agreement
20 from Lifetime?
21 A. I don't know. I have had them sign for
22 other products but I don't remember what they are.
23 We have done that.
24 Q. Under what circumstances would you have
25 Costco sign a confidentiality agreement?

Page 144

1 A. If somebody is bringing in a brand new
2 item, that no one has ever seen, it's the first
3 time and it's secretive, that we don't want it
4 out to the, you know, introduction to the market,
5 being first, new product, patent type things or
6 big considerations when you are doing
7 introductions so that the secretiveness is, there
8 is a reason for it and we honor that. And that's
9 just part of our business.
10 Q. So in situations where it's important
11 to keep a new product secret--
12 A. Yes.
13 Q. --such as for patent protection, then
14 you may request the buyer to sign a
15 confidentiality agreement?
16 A. Sometimes you can.
17 Q. And in some situation have you done
18 that?
19 A. I have requested it.
20 Q. But you did not with PriceCostco?
21 A. I don't remember. You mean--oh, I have
22 with them before. I don't remember the products.
23 I can remember seeing a one-page sheet that we've
24 taken in--and I don't remember what the products
25 were, that's--I'm sorry about that, but I have

36 (Pages 141 to 144)



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

Corporate Offices: 60 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|--|---|
| <p style="text-align: right;">Page 145</p> <p>1 taken in, was a one-page sheet that, you know, 2 they signed saying that I understand that this is, 3 you know, I will not divulge any of the things 4 that I have seen at this meeting, dah, dah, dah, 5 dah, dah, regarding this particular product, 6 understanding that it's a confidential—I don't 7 know what the wording was but it was something 8 like that. But I have had some like that. 9 But it's, you know, to, to—in reality, 10 a company bringing in something new or their new 11 program or their new pricing or some new 12 innovation, coloration, style, design, is not to 13 be passed on from a buyer to a competitive 14 vendor. That is an absolute no-no. That is the 15 kiss of death for a buyer, for that to get out on 16 them or for this person over here that got 17 infringed upon to go to their boss that—they 18 won't last very long. It's part of the 19 competitive nature. And I'm not sure about the 20 legalities but I know the moralities of it. 21 Q. So I understand what you are saying— 22 correct me if I'm wrong—is that it's important 23 for the buyer not to reveal confidential 24 information regarding a new product to a buyer of 25 a competitor.</p> | <p style="text-align: right;">Page 147</p> <p>1 missing the boat. Don't you know what the new 2 color palette is? It's orange with chartreuse and 3 yellow. You can't do that. You can't do that. 4 You know, people pay hundreds and thousands and 5 millions of dollars for color marketing to find 6 out what the new colors coming in here are and to 7 be involved in all that kind of thing. Or the 8 latest high-tech materials on various products or 9 a new cantilever design in tents that we do some 10 kind of a proprietary cut or design or something 11 like that that's new. 12 They can't say, oh, man, you ought to 13 see this new thing. Boy, that is—the bounds of 14 integrity and, for that company would really be 15 stressed. I mean, it's just another variation of 16 sharing pricing. 17 Q. But, as I understand it, there are some 18 situations where you would ask the buyer to sign 19 a confidentiality agreement. Is that correct? 20 A. I have. I have sometimes. 21 Q. But you have not done that for Lifetime 22 and Costco. Is that correct? 23 A. That is not correct. 24 Q. Okay. 25 A. I have done that with Costco in the</p> |
| <p style="text-align: right;">Page 146</p> <p>1 A. No. 2 Q. Okay. Well, perhaps you can clarify. 3 A. To anyone. 4 Q. To anyone? 5 A. To anyone outside of their business 6 association in that office. For example, you've 7 got, in a buying office you'll have, let's say 8 that we are the bicycle buyers at Costco and we 9 got this new alloy rim coming in and it's brand 10 new, with a different kind of spokes that you've 11 never seen anything like before, the design is 12 just, oh, man, it's going to blow all of them 13 away. You got this. Man, this is cool. Why 14 didn't somebody think of this before? 15 So you take it in there and show it to 16 them and they are going to pass it around. Well, 17 if Charlie wasn't there at the meeting, you should 18 see this one, I mean, this is great. 19 If they go and call Huffy, who is a 20 bicycle competitor, or Schwinn, and say, you guys 21 are missing the boat on this one, you ought to 22 see this. Oh, why I would sue them so fast. I 23 mean, you just can't do that. 24 So you talk about the nth degree of 25 that, you know, and say, well, you guys are</p> | <p style="text-align: right;">Page 148</p> <p>1 past but I don't remember if—what the item was, 2 but I do remember having some—I hate them because 3 I don't have to have my, my people do it. They 4 honor that without signing. 5 But if a vendor wants one signed, and 6 they are my boss, you may say, for that 7 particular factory, then I may have to go in and 8 ask to have it signed. 9 I really didn't ever want to because 10 that's questioning, you know, like, it's almost 11 like you are questioning their integrity because 12 they know. These people are professionals at 13 Costco. They are the best buyers that there is. 14 They know what they can and can't say. They have 15 been trained. They, they know their liabilities. 16 They would never do something like that. 17 So that's why I always didn't like to 18 have to go in and ask the people you call on day 19 in and day out. Be like going home and asking 20 your wife, Honey, now sign this because I don't 21 want you telling, you know, my brother that I 22 took his \$5 or something. 23 I mean, it's just, it was like pushing 24 it. You know, it was, it jeopardized your 25 relationship a little bit there, like, Come on,</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

37 (Pages 145 to 148)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-683-2180

Toll Free: 877-441-2180

Fax: 801-683-2181

| | |
|--|--|
| <p style="text-align: right;">Page 149</p> <p>1 Wohlwend, what are you—I know these people. I 2 call on them day in and day out. They rely on me 3 to take care of them and I would never, you know, 4 do that, nor would they do that to me. So . . . 5 Q. So Lifetime never asked you to take the 6 confidentiality agreement— 7 A. I— 8 Q. —to Costco and have them sign it 9 before they viewed a new product? 10 MR. LAYCOCK: Objection. Asked and 11 answered. 12 THE WITNESS: The question, if I can 13 restate it so that I'm understanding this, you are 14 asking me if, if Lifetime had asked me to have a 15 Costco person, buyer, sign a confidentiality 16 agreement. I don't remember. That's all I can 17 tell you on that. 18 BY MR. CROCKETT: 19 Q. Do you recall them asking you, Lifetime 20 asking you to orally let your buyers know that 21 this is confidential information? 22 A. Yes, we have done that. We have talked 23 about it. 24 Vince Rhoton was always one that pushed 25 me on that, we got to be sure this is</p> | <p style="text-align: right;">Page 151</p> <p>1 Q. But you don't recall when that 2 happened? 3 A. No, I do not. But it did happen more 4 than once. 5 Q. Did that conversation happen prior to 6 1998? 7 A. I'm sure it did. 8 Q. Why do you think? 9 A. Because by 1998 I was already, I think, 10 phasing out from being in the major, major calls. 11 I think by that time—I am not sure, though—that 12 Dan and Mary were already in place by '98 and 13 that they had pretty much become the lead as far 14 as account management in their respective areas. 15 Q. But, but your memory allows you to 16 recall that that conversation 17 A. My memory allows me to recall that 18 particular kind of thing because that's a very 19 important thing in our, in our profession, and 20 especially with my company. That was one thing 21 that is preached when I train my people and set 22 the tone for them on a moral basis as far as 23 doing business. They know integrity, truthfulness, 24 tell—take—tell the customer the good and the 25 bad, you know, it's great to come in there with a</p> |
| <p style="text-align: right;">Page 150</p> <p>1 confidential. And I said, don't worry about my 2 people, you know. My people are, are—I used to 3 kind of get in a little, seemingly like a little 4 bit of a tiff with him about that particular 5 because he was more paranoid about that than I. 6 Of course I'm very close to my buyers 7 and know how they operate and know what they—the 8 results of something like that could be for 9 everyone, especially them. But, no, I, I, I have 10 addressed that regarding Lifetime because that was 11 an issue with he and I. 12 Q. So you have a clear recollection— 13 A. No, I don't—I know, I know that that 14 was a subject of discussion. I do remember that 15 being a subject of discussion with Vince because 16 he was always so adamant about it and I was maybe 17 a little more strongly adamant about it, we don't 18 have to, you don't have to talk to these people 19 that way. And that's why. 20 Q. Do you remember when you had this 21 conversation with Mr. Rhoton? 22 A. No, I do not. No. 23 Q. Do you remember— 24 A. But I remember that that was a topic of 25 conversation during his and my tenure.</p> | <p style="text-align: right;">Page 152</p> <p>1 new price and show them stuff I got, new stuff, a 2 lot of—that's fun, but coming in and telling them 3 that I am not going to deliver for an ad that 4 they've got, let me tell you something, that's no 5 fun. So, you know, they've got to learn to do 6 all that. And that's the way we try to have 7 operated and build this business and live on it. 8 They know that we'll come in and tell them the 9 bad news with the good news and we'll be there 10 for them when there's problems, and we have plenty 11 of problems. 12 Q. Would it have been an important event 13 if, say, Mr. Rhoton had come to you and asked you 14 to sign—or asked you to take a written 15 confidentiality agreement to one of the buyers? 16 A. It would have, it would have probably, 17 I probably would have resisted it. 18 Q. But you have no recollection of— 19 A. No, I don't. 20 Q. When you say that, that it's important 21 that the buyers keep confidential information from 22 the competitors of your client, such as Lifetime, 23 is it also important for those buyers to keep 24 information, that sort of information from 25 Lifetime regarding a new product confidential with</p> |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

38 (Pages 149 to 152)

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, Utah 84101

801-983-2180

Toll Free: 877-441-2180

Fax: 801-983-2181

| | |
|---|--|
| <p style="text-align: right;">Page 153</p> <p>1 all, with respect to everyone? Is it important 2 for the buyer not to disclose that information, 3 say, to his wife or husband? 4 A. It is, yes. 5 Q. And 6 A. For example, if a buyer has knowledge 7 of this new hot product that's going to come 8 about and knows a lot about it and no one else 9 knows about it and they are the one that it's 10 traced back that was the leak, maybe they are at 11 a cocktail party and they are telling one of 12 their influential friends that maybe has a contact 13 with someone else that has a contact with the 14 competitor and it gets back to them, this person 15 has talked out of school and is, and is subject 16 to retribution as far as whatever happened to 17 that. Yes, that is wrong. They should not 18 really talk about it other than in a professional 19 manner within the realm of their business 20 associates. Yeah. 21 Q. So just to sum up, based on your 22 dealings with Lifetime Products, during your time 23 with Frontier Northwest, if there was important 24 confidential information that should be protected, 25 then it was relayed to you orally that this</p> | <p style="text-align: right;">Page 155</p> <p>1 confidentiality papers but I don't remember who it 2 was. It could have been Lifetime. It could have 3 been Wenzel. It could have been Rubbermaid. It 4 could have been Sportcraft. I don't know who it 5 was but I have handled--you know, there usually 6 was a one-page cover thing, kind of a thing, 7 confidentiality thing for them to sign. And I 8 really, really disliked taking those in and that's 9 why I remember, because I don't like to do things 10 I don't like to do. You know, you just, you tend 11 to remember, but I don't remember who it was. I 12 can remember some general kind of things like that 13 thought but I know, you know, that I have had 14 them. Not real often, but I have had them. 15 MR. CROCKETT: No more questions. 16 MR. LAYCOCK: Thank you. We consider 17 this deposition to be closed. 18 THE WITNESS: Okay. 19 (Deposition concluded at 2:05 p.m.) 20 21 22 23 24 25</p> |
| <p style="text-align: right;">Page 154</p> <p>1 information should be protected, but there was 2 never a written agreement with regard to that 3 confidential information. Is that correct? 4 A. No. I can't--I answered that earlier. 5 I can't say that. There may have been--I 6 cannot--I can, I can answer that in two parts. 7 The first part is orally, the oral part 8 where I know that we always talked about these 9 kinds of things: This is new, God, keep this 10 under your hat, this is a great new thing. 11 That's the kind of thing you do, especially when 12 you're generating excitement into peddlers. You 13 know, it's part of the thing that keeps them 14 going. It's their lifeblood, new things, 15 exciting, secret, go in, I am the first one kind 16 of thing. 17 The second thing that you said was 18 that, regarding we never gave them any written 19 thing. I do not know that. We may have but I 20 cannot say yes or no one way or the other. 21 Q. Okay. But you do recall that there 22 were other of your vendors that had written 23 confidentiality agreements that they asked you to 24 have executed with your buyers? 25 A. I have done some, some written</p> | |



Thacker + Co LLC

Court Reporters

Utah's Leader in Litigation Support

39 (Pages 153 to 155)

THIS PAGE BLANK (USPTO)